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RIGHTS OF THE CHILD

Sale of children

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Special Rapporteur appointed in accordance
with Commission resolution 1990/68

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Introduction

1. Pursuant to Commission on Human Rights resolution 1990/68 and Economic and Social Council decision 1990/240, the Special Rapporteur on the sale of children submitted his first report to the Commission on Human Rights at its forty-seventh session (E/CN.4/1991/51). At that session, the Commission adopted resolution 1991/53, in which it requested the Special Rapporteur to continue his work and decided to consider the question at its forty-eighth session under the agenda item "Rights of the child". This resolution was endorsed by the Economic and Social Council in its decision 1991/247.

2. The present report is the second to be submitted by the Special Rapporteur. It covers the period January 1991 to December 1991 and aims to provide a more detailed analysis of the problem worldwide.

3. During the period of his present mandate, the Special Rapporteur carried out two visits in order to obtain the most broadly based information possible. The first visit, to the Netherlands, took place from 10 to 15 June 1991 and its findings are reflected in Section IV; the second visit, to Brazil, took place from 6 to 19 January 1992 and its findings are reflected in the addendum.

A. Considerations of a general nature

4. The phenomena of the sale of children, child prostitution and child pornography are undoubtedly global in nature. 1/ As this study will reveal, they are much more extensive than is apparent at first glance. The tragic circumstances leading to the abuse and exploitation of children cut across the barriers between the developing and developed worlds. The issue confronts both developing and developed countries, although the extent varies according to the country. Its elusiveness is based in part upon the fact that it is often invisible or only marginally visible, shielded by the cloak of a pervasive underworld. Its menace is all the more daunting because it is transnational in its implications and transgenerational in its repercussions.

5. One is tempted to reflect that "there is nothing new except that which has been forgotten". The slavery of yesteryear and the treatment of humans as chattels, to be used and abused, are very much part of contemporary reality, although there have been changes of form and substance. The circumstances are all the more tragic because a multitude of children worldwide fall into this web of bondage, and the numbers are increasing daily. 2/ The vicious circle in which they are caught is aggravated by the demands of a society that professes to be modern and yet perpetuates the vestiges of the past.

6. What lies behind the sale of children, child prostitution and child pornography? The causes are multifarious, but a key word which appears consistently is "poverty". 3/ As noted by the United Nations Report on the World Social Situation 1990:

> "Poverty remains a major challenge to the world community. In rich countries, where absolute poverty has been virtually eliminated, new forms of poverty are emerging. In many low-income countries, social

> conditions have none the less greatly improved. Pockets of social poverty persist in all societies, but the greatest numbers of absolute poor in the world are in South Asia and sub-Saharan Africa". 4/

7. Socio-economic needs, particularly in developing countries, may lead parents to sell their children or to compel children to undertake activities which are detrimental to their development. Those needs also appear in so-called developed countries where there remain sectors of the economically disadvantaged. There are also differences between various social strata and ethnic groups, some of which are better endowed than others.

8. However, one should not take a defeatist attitude towards the poverty factor; it should not be used to legitimize child exploitation as a *fait accompli*. Indeed, "the exploitation of children cannot be justified by poverty or underdevelopment. Besides the long-term action required to treat the underlying causes and thus prevent these phenomena from occurring in the future, it is essential that States take urgent and immediate measures to reduce the dangers facing children". 5/

9. There is an innate quest for the satisfaction of basic human needs, such as food, education and work; the search for a better life, both physical and mental, is interwoven with the development process, the community, the family and the child. In this context, how do the international and national communities, or more particularly the State respond?

10. Compounding those socio-economic needs is an increasing pattern of family breakdown, exacerbated by migration from rural to urban areas and from one country to another. As parents are pressured to meet the exigencies of modern life, children may find themselves neglected or abused. They may become "runaways, throwaways or walkaways", 6/ precisely because the safety net traditionally accorded by the family unit no longer affords them security.

11. This situation is linked to the question of population growth and how people's desire to improve their quality of life is satisfied. Inadequate population planning may lead to a population explosion and, ultimately, unwanted children. In some societies, a price may then be placed on the head of the child to ensure the existence of others.

12. Materialism and unabashed consumerism take an additional toll where spiritual values are neglected. Much of the exploitation of children arises precisely because material values have overtaken those which place a premium on human life and development. Shamefully, the human rights of the child may be violated because the child is viewed as a factor of production, as an investment for economic returns, rather than as an entity vested with substantive rights and inherent dignity.

13. Socio-cultural discrepancies may also contribute. Discrimination against women, for instance, may lead to fewer educational and occupational opportunities for girls. The preference for boys in many societies, coupled with a chauvinistic attitude towards the development of women, often places girls at a disadvantage; they are the ones to be exploited first. This is

particularly evident in those societies which push girls into prostitution. In addition, certain religious practices need to be reassessed to ensure that gender discrimination is not a pretext for child exploitation. 7/

1. Supply and demand

14. One economic law seems to hold an apparent truth for children who are exploited and abused: because there is demand, there is supply, and vice versa. The truism is based upon the fact that although socio-economic and other needs may lead to child exploitation, there is at the same time a sector of the community which benefits from the sale of children, child prostitution or child pornography.

15. As will be seen in the case of intercountry adoptions which may give rise to the sale of children, there is a structural demand based upon the fact that there is a declining birthrate in the developed world and there are fewer children to be adopted there. A dearth of children in those countries thus leads to the search for children in developing countries. Likewise, there is always a demand for child labour precisely because it is cheaper than adult labour, and children are easier prey because they are unorganized and less likely to complain than adults.

16. Therefore, while we may work towards attenuating the socio-economic and other needs of families and children, we must also bear in mind the need for strategies to tackle the demand factor and to ensure that child abuse and exploitation do not occur.

2. Criminality

17. In the case of sale of children, child prostitution and child pornography, there is often an intermediary who benefits. Trafficking in children may arise where children are traded or transferred for improper ends. At its worst, this involves organized crimes and a web of syndicates.

18. Because there are criminal elements seeking to exploit children, the efficacy of the laws and of law enforcement become important issues. In many societies there are loopholes in the criminal law, and law enforcement is weak; there are recurrent complaints about the law enforcement authorities. Corruption and collusion with undesirable elements are not rare. The following comment deserves note:

> "The organized crime is lying low, but no one ever sees it in its entirety. If this is only due to lack of effort and will, this has distinct reasons. The most important reason is the political strain caused by initiating large investigations in one's own country. Thereby one also admits that children are being bought and sold, that children are abused, that children are most grossly molested. These are concessions which only few administrations can live with." 8/

19. On the one hand is the issue of how best to mobilize law enforcement against the exploiters of children. This is inevitably shaped by the need to examine factors conducive to behavioural change; criminal sanctions alone will not suffice if there are psychological and other reasons leading to a certain type of behaviour which cannot be cured by fines and prison sentences alone. This is linked to the pluridisciplinary approach discussed below. On the other hand, there is the question of how to stimulate law enforcement authorities to improve their performance. If the police are badly paid, poor law enforcement is bound to result. Moreover, if child abuse and exploitation are an integral part of a community's problems, the community itself should participate actively in law enforcement. Does it participate sufficiently, or is it allowed to do so? Community awareness must compliment the work of law enforcement personnel.

20. On another front, one can note that criminal law per se aimed at apprehending criminal elements, as it is basically curative by nature is insufficient to tackle the issue of child exploitation. Laws and policies aimed at prevention are equally or even more important. This may involve, for instance, social security and welfare laws giving assistance to poor families so as to enable them to keep their children and enable them to grow safely to enjoy the advantages of life, including education and jobs, instead of being forced to undertake exploitative activities for lack of other alternatives.

3. Chain effect

21. This denotes the linkage between various forms of malpractice, and the fact that one form may lead to another. This is most evident in the case of child abuse where the abused may subseqently become the abuser. This is also a visible cause of family disintegration which may compel children to run away from home and then resort to prostitution as a form of subsistence. The process may evolve into child pornography, which is only one step away from prostitution.

22. Children in such difficulties may become dependent upon narcotics, which in turn leads to greater dependency on prostitution and/or pornography as a means of purchasing drugs. The child's attachment to criminal patterns of behaviour intensifies over time. 9/

23. This chain effect encourages us to view the question of child abuse and exploitation as a dynamic which may have a range of negative consequences. To break that vicious circle, more than a legalistic approach is required.

4. Pluridisciplinary approach

24. Although the existence of laws can help to prevent or remedy child abuse and exploitation, much more is needed. Multi-faceted action - socio-economic, cultural, political and environmental - is required across a pluridisciplinary or interdisciplinary spectrum.

25. The problem has to be placed within the whole context of development. There is a need to change inequitable structures at the national and international levels and to allocate resources for those in need. Prevention

of the problem is closely interrelated with access to and relevance of education and occupational opportunities. Helping the family is also helping the child. From another angle, remedies in the form of sanctions alone do not suffice, precisely because other stimuli for change are required. In the process of cure, social interventions, including counselling and rehabilitation facilities and subsidies, are needed for children and families which have fallen into difficulties. At times their abusers and exploiters may also require parallel facilities to change their conduct.

26. There is thus a close bond between legal, economic, social, cultural, political and even environmental strategies. While poverty in the guise of socio-economic needs may be a predominant factor leading to child exploitation, cultural stigmas and taboos may aggravate the situation. Moreover, the fact that a political system is undemocratic may imply that changes designed to improve the child's plight may be more difficult for lack of a participatory approach. War may compound the political uncertainties. As the quality of the environment declines, whether it be the environment of the womb, the family, the workplace or the world beyond, existence is at stake and the competition for survival leads to distortions.

27. If these concerns harbour a plethora of causes and effects, they call for correlative strategies to be comprehensive, interdisciplinary and pluralistic. It is not only the law that counts, but the whole development process. It is not only policies that count but also implementation, evaluation and concomitant budgets. It is not only education that counts but also earnings. It is not only the governmental sector that counts but also the non-governmental sector, particularly in the call for popular participation. It is not only federal programmes that count but also municipal and local action. It is not only national initiatives that count but also international commitment, with the child and the family as the centre of human development.

B. Methodology

28. The study examines three specific areas of concern: the sale of children, child prostitution and child pornography. Under the heading "sale of children", four particular issues are addressed: the sale of children in relation to adoptions, child labour exploitation, human organ transplantation and other forms of sale.

29. This is the second report to be submitted by the Special Rapporteur. The first report - a preliminary report providing a structure and an overview of the situation - was submitted at the beginning of 1991. This second report was completed at the end of 1991 and aims to provide a more detailed analysis of the problem worldwide.

30. The method of work was based upon a four-pronged approach. First, documentary and verbal information was obtained throughout the year from both governmental and non-governmental sources. Second, a questionnaire (see annex I) aimed at collecting country responses to the situation was sent to a broad range of countries, non-governmental organizations and concerned individuals in mid-1991. Third, the Special Rapporteur began to undertake field visits to study country profiles. Fourth, the process of intervening

on behalf of individuals in regard to human rights violations under this mandate was also initiated. The information gathered from these sources is encompassed in this study.

31. In retrospect, it may be observed that key information was often lacking, or if information was available, it was at times unreliable. In some quarters, there was a paucity of reported "cases" with relevant back-up evidence during the year, even though the problem was known to be widespread. These inconsistencies are reflected in the report; some areas are also more detailed than others for this reason.

32. The responses to the questionnaire were also limited in content and scope. The replies from the Governments of the following countries reached the Special Rapporteur by the beginning of December 1991: Algeria, Austria, Bangladesh, Chile, Colombia, Cuba, Dominica, Egypt, Germany, Italy, Japan, Malta, Mauritius, Philippines, Poland, Qatar, Rwanda, Spain, Uruguay and Zimbabwe. Information from these replies will be referred to in this study where appropriate. The Special Rapporteur wishes to thank these Governments warmly for their replies, and looks forward to further responses from other Governments in order to facilitate his task of information gathering. The detailed reply of the Government of the Philippines was greatly appreciated for its frank and constructive nature; it was evident that the authorities had consulted the non-governmental sector in depth so as to reply in an analytical manner.

33. The first field visit of the Special Rapporteur was at the invitation of the Government of the Netherlands. It yielded a wealth of information, and the experience gained from the visit should be a valuable case study for all countries. The Special Rapporteur wishes to thank the Government of the Netherlands for its cooperation throughout the visit. The findings of the visit are included in the section IV of this report.

34. At the time of writing, the Special Rapporteur was also preparing to visit Brazil to compile the second country study. A report on the visit to Brazil will be submitted as an addendum to the present report; it should be considered as an integral part of the "country study" section.

35. During the course of the year, the Special Rapporteur intervened with the Government of Pakistan, by means of an urgent action, on behalf of a young girl named Fatma, who was alleged to have been kidnapped in Bangladesh and taken to Pakistan. Unfortunately, the Pakistani authorities were unable to locate the girl, and subsequently requested help from the Bangladeshi authorities to ascertain whether the girl had been taken back to Bangladesh. At the time of writing, there was no further progress concerning this case. The problem highlights difficulties in tracing missing children who are trafficked between States, and calls for urgent cooperation to prevent and remedy a situation which occurs in many parts of the world. The case will also be referred to later in this study when the question of sale of children is broached in greater detail.

36. In undertaking the task of preparing this report, many institutions and individuals provided invaluable support. The Special Rapporteur wishes to thank warmly all the Governments, non-governmental organizations and persons who sent information and data for the study. The assistance of the following international agencies is gratefully acknowledged: UNICEF, WHO, ILO and Interpol. Various non-governmental organizations, including Defence for Children International (DCI), International Catholic Child Bureau (ICCB), Save the Children Alliance and International Abolitionist Federation (IAF), offered consistent support. The assistance of these and other institutions and persons committed to children's rights is highly appreciated.

I. SALE OF CHILDREN

37. Perhaps the first difficulty in facing the problem of sale of children is defining the very notion of the "child". Different systems have various age criteria, and there is an admixture of other terms, such as "juvenile", "minor", "adolescent" and "youth". However, the advent of the Convention on the Rights of the Child (1990) has provided a global yardstick: in article 1, it is stated that "a child means every human being below the age of 18 unless, under the law applicable to the child, majority is attained earlier".

38. In some areas, it is necessary also to refer to other international instruments in order to link that definition with the age range perceived in other contexts. For example, the Convention does not stipulate 18 as the minimum age for employment. However, in International Labour Organisation (ILO) Convention No. 138, the minimum age for such activity is set at 15, with possible reduction to 14 in developing countries. The variation suggests that domestic law and policy concerning the rights of the child should be reappraised so as to keep pace with international developments; the latter should be perceived as setting the basic minimum standards.

39. There is an additional question concerning whether the term "child" covers the unborn. This is particularly pertinent to *in vitro* fertilization, abortion and the status of the foetus. The position is equivocal at the international level. The Convention on the Rights of the Child does not resolve the issue, but in its preamble, it notes that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth".

40. Equally challenging is the notion of "sale". A survey of the major legal systems of the world would reveal different interpretations. For instance, there is a divergence between common law and civil law systems. Ambiguities may arise concerning whether a sale merely involves a child sold by one person to another (the buyer) like a consumer article or whether it covers also "(a) a child transferred to another in exchange for a sum of money or other considerations which do not constitute the price of the child but which nevertheless represents unjustified profits (e.g. bribes);
(b) where the child is rented to another person, for example, for the purpose of sexual exploitation or exploitation of his labour when the sum paid is

completely disproportionate to the work the child has to do; (c) the situation in which a child is held until the parent or guardian is in a position to meet a financial obligation". 10/

41. The approach should not be too legalistic. The key to the concept of sale is whether the child is exploited, which usually entails another benefiting from violation of the child's rights. The questionnaire prepared by the Special Rapporteur (see annex I) also advocates the need to be flexible. It offers as a starting point the following definition derived from the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery: "The transfer of a child from one party (including biological parents, guardians and institutions) to another, for whatever purpose, in exchange for financial or other reward or compensation".

42. What exemplifies the sale of children? Here again there is room for a diversity of approach. One United Nations document refers to three situations: sale for adoption, sale for forced labour and sale for prostitution. 11/ According to one non-governmental organization, there is a broader grouping: (a) the sale of children for adoption and marriage; (b) the sale of children for prostitution and sexual exploitation; (c) the sale of children for pornography; (d) the sale of children for cheap or bonded labour; (e) the sale of children for begging, stealing and other criminal actions; (f) the sale of children for organ transplantation. 12/

43. In so far as child labour entails the "sale" of a child, there may be a plethora of activities where children are exploited, including the following: armed conflicts; adult criminal activities; forced labour or abducted children; debt bondage; labour in the unorganized sector; labour in the organized sector; child prostitution, pornography and sexual exploitation; forced marriages; disabled children in the labour force; domestic labour; apprenticeships and family-supervised labour. 13/

44. During the course of 1991, there was a trend towards highlighting the use of children in armed conflicts (child soldiers) and the abduction/disappearance of children, which might be construed as a "sale". 14/

45. It is therefore proposed to treat four different categories in this study: (a) adoption for commercial purposes; (b) child labour exploitation; (c) organ transplantation; and (d) other forms of sale. The categorization should be seen as indicative rather than exhaustive. The search for information by the Special Rapporteur in 1991, particularly by means of the questionnaire (see annex I), was aimed primarily at the first three situations. The fourth situation may cover other areas, such as child soldiers and child abduction/disappearance, but the Special Rapporteur did not investigate these in detail.

46. Rather, a step-by-step approach has been adopted to deal progressively with each of these situations, given the constraints of time and availability of empirical evidence. In future, it is hoped to delve more deeply into the

issues covered by the fourth situation through more detailed investigation, while keeping track of the evolution of the sale of children in its entirety.

A. Adoption for commercial purposes

47. The concept of adoption may be analysed as follows: "in a broad, non-legal sense adoption may be defined as the institutionalized social practice through which a person, belonging by birth to one family or kinship group, acquires a new family or kinship ties that are socially defined as equivalent to biological ties which supersede the old ones, whether wholly or in part". 15/ In the legal sense, it implies that the adopted child becomes entitled to all the rights, including hereditary rights, to which the biological child would be entitled - "filiation". The notion is found globally, with the exception of Islamic traditions. However, protection of children through the institution of *kefala* is recognized by the latter as a more limited relationship akin to tutelage or wardship without the legal implications of filiation.

48. With the proliferation of inter-country adoptions since the end of the Second World War, the process has evolved into an international and transnational phenomenon. Particularly since the 1950s, there has been an increasing flow of children from developing countries to developed countries due to an emerging structural supply and demand, at times with serious consequences tantamount to sale of children. The situation is encapsulated as follows:

> "In the rich countries, the gap between the number of people who want to adopt children and the number of children available can only increase, for obvious reasons such as the legalization of contraception and abortion, social acceptance of single motherhood, financial and other assistance granted to families with economic and psychological problems. In view of the small number of children available for adoption, they turn to less wealthy countries which have a high birthrate." 16/

49. The process has become distorted for the following reason:

> "Although throughout the developed world there are many more people wanting to adopt children than there are children available, this ratio is turned on its head in the children's country of origin since parents wishing to adopt will be in competition with similar parents from all the other industrialized countries. Inevitably the laws of the market will apply [...] This particularly exacerbated climate will breed various networks and illegal practices." 17/

50. There is also new light on the issue:

> "What is new is the link between trafficking and sale with the practice of adoption of children in their own countries, and above all, in inter-country adoption. The channels for inter-country adoptions are at times clandestine and illegal. There is also a grey area where a

> seemingly legal entry of a child into a country where the child is adopted is obscured by independent or private adoptions whereby prospective adoptive parents bypass officially recognized authorities and act through their own means." 18/

51. A list of the major receiving countries, representing the greatest case-load of inter-country adoptions from developing countries, can be given as follows: United States, France, Italy, Germany, Sweden, the Netherlands, United Kingdom, Norway, Denmark and Australia. 19/ The major source countries include Colombia, South Korea, Romania, Brazil, India, Peru, Sri Lanka, Thailand, Guatemala and the Philippines. 20/ Many abuses in the adoption process amounting to the sale of children can be traced to these countries. However, as will be seen in the national scenario below, recent developments show that many of these countries are beginning to combat the issue more seriously, and the situation has improved in some quarters.

52. The 1980s witnessed a rise in inter-country adoptions from Central/South America and Asia. At the end of the decade, Eastern European countries such as Romania and Poland opened their doors to would-be adopters from other countries. The situation proved to be critical in Romania in the 1989-1991 period when "an extraordinary 10,000 Romanian children were adopted by foreigners in the 18 months after the fall of the Ceaucescu dictatorship. Half of them, one survey showed, were less than 6 months old, suggesting that these were not the children from overcrowded orphanages whose depiction on television caused the initial rush to Romania, but babies obtained directly from Romanian families." 21/ As will be seen below, although the situation has improved, there is always a need for greater vigilance.

53. A key problem is that in several countries the procedures for dealing with inter-country adoptions are inadequate, thereby providing room for those who would exploit the system. 22/ Sometimes there is no effective central authority in either the sending or the receiving country, and where such authorities exist, there is insufficient cooperation to regulate the process at the bilateral or international level. Where there are relevant authorities and procedures to regulate such adoptions, the process may be tedious and the waiting period too long; this acts as a disincentive to the use of official channels for adoption.

54. A recurrent dilemma is whether to compel potential adoptive parents to utilize official channels only or to permit them to act on their own initiative, often with the help of unregistered intermediaries, particularly adoption agencies. Should the authorities permit only those agencies which are registered to operate, i.e. "agency adoptions", or should the potential parents and intermediaries be able to act independently without being scrutinized by official channels, i.e. "independent adoptions"? 23/ The trend in many countries of origin suggests that where local inter-country adoption agencies are allowed, registration by an administrative or judicial organ is required. However, there is "no consensus regarding permission for foreign adoption agencies to operate; some countries require them to obtain permission to operate and some do not". 24/

55. The danger is that in acting independently, unregistered adoption agencies or intermediaries may charge fees that exceed justifiable remuneration, and this would be tantamount to the sale of and trafficking in children. Pre- and post-adoption services are often lacking in regard to independent adoptions, while a proper parent-child matching process is not always guaranteed. 25/ The vicious circle of vested interests surrounding such practices has given rise to a degree of scepticism:

> "In receiving countries, parents, agencies or intermediaries may break the law (child trafficking, falsifying documents), circumvent the purpose of the law (*fait accompli* adoptions, obtain unreasonable financial gain, charge unwarranted fees), engage in questionable activities or knowingly or unknowingly cooperate with contacts who are engaged in questionable activities .... In countries of origin, parents, agencies, intermediaries and officials may also engage in illicit or questionable activities. These kinds of activities generally pertain to the method of obtaining the child (exerting pressure to secure the consent of biological parents, buying or kidnapping children), reaping unwarranted financial gain (charging improper fees), and falsification of documents (paternity certificates, consent)." 26/

1. National scenario

56. As a result of the complaints against many States in regard to their adoption laws and policies, innovations have taken place which deserve attention. In Central and South America, there is a trend towards greater regulation of inter-country adoptions. The Government of Brazil has made adoption illegal unless the child in question has been registered as abandoned, and placement in a foreign substitute family is now considered to be an exceptional measure. Argentina and Colombia permit adoption only if there is a court ruling to the effect that the child is abandoned. Recent legislation in Colombia provides that adoptions are illegal if the children are not drawn from the State Welfare Institute or from authorized private adoptions agencies. In Nicaragua, prospective adopters must have permanent residence there. In 1988, Chile enacted a new law to punish trafficking in inter-country adoptions. In 1990, Ecuador adopted a new law imposing conditions upon adoptions, including the provision that inter-country adoptions would only be permitted in cases where there are official agreements with the receiving countries or their respective authorities. Guatemala has recently proposed a new adoption law to set up a central organization to monitor all adoptions.

57. In Asia, the Philippines, Thailand and South Korea now have strict regulations on inter-country adoptions. The new Philippine Family Code bans foreigners from private adoptions, and regulates the position of children and youth who travel unaccompanied abroad. In Indonesia, the potential adopter must have been domiciled and worked in the country for at least three years. In India, the Supreme Court, in the case of Laxmi Pandey v. Union of India, intervened to establish the principle that local adoptions take precedence over inter-country adoptions. 27/ A draft law in Sri Lanka seeks to confine inter-country adoptions to those children who are already in State-run children's homes and to punish trafficking in children more severely.

58. In Europe, in 1985 and 1988, France issued decrees imposing strict conditions concerning official clearance for people desiring to adopt children from abroad; a preliminary "agreement" is needed from the Président du Conseil General, the head of the Department of Social Assistance. The pattern has been repeated in Italy, the Netherlands and Sweden where clearance is required from judicial or administrative authorities. In 1991, the Government of Romania suspended inter-country adoption and introduced new laws to regulate the adoption process in general. 28/ The new position is to enable local adoption to prevail and to permit inter-country adoptions only when the local options are exhausted.

59. The United States position is more difficult due to the fact that there is no comprehensive federal law on the matter; the regulation, if it exists, remains at the state level. Since the demand for inter-country adoptions is reportedly highest in this country, the lack of consistency between the approaches of the various states underscores the fact that the potential for improper dealings between potential adopters and intermediaries is ever-present. However, even in the absence of a federal law on inter-country adoptions, prevention of abuses is possible. This is exemplified by the procedure whereby United States consular officials scrutinize the requests for visas in regard to prospective adoptees in the countries of origin in order to prevent abuses. This is an area where more dialogue and cooperation between the composite states, and between the immigration authorities and adoption agencies, would be welcomed.

60. Interestingly, according to reports, the number of inter-country adoptions from Africa is small when compared with the other continents. This casts a light on the geographical and ethnic differences inherent in inter-country adoptions. However, at the local level abuses may arise. In Zimbabwe, for instance, there remains the cultural practice of appeasement, ngozi, whereby young girls are given as compensation to an aggrieved family from the other party. Eradication of this practice requires not only a juridical approach but a strategy aimed at behavioural change through education and social interventions. On another front, there are reportedly some cases of white girls giving up their babies to childless couples clandestinely and for payment, despite a national law regulating the process of adoption and prohibiting such payment.

61. It is evident that the mere presence of laws regulating the process of adoption does not guarantee that abuses will not occur, especially as law enforcement is poor in many countries. At times the sale factor is related to the abduction of children even where the adoption process is not necessarily initiated; this will be dealt with more substantially in a later section.

62. On another front, more attention should be paid to the national development process itself with the call for a development strategy geared to improving people's quality of life and to enable biological parents to have the means to retain their children instead of offering them for adoption due to lack of other options.

63. More specifically in relation to the intermediary factor, a major weakness common to many countries is that they are still uncertain whether to outlaw independent inter-country adoptions. On the one hand, the trend to prohibit such operations is exemplified by Finland which provides that all inter-country adoptions must be channelled through agencies authorized by the National Board of Social Welfare. On the other hand, even in those countries which have adopted new laws and stricter standards on the adoption process, in many cases the law is silent or vague on whether to compel registration of intermediaries in inter-country adoptions. The fact that, despite the new conditions imposed by innovative laws and policies, there are consistent reports of those who bypass legal channels in inter-country adoptions is not reassuring. There remains a wide gap between legal strictures and the lacunae in the implementation process on the one hand, and the insufficiency of pluridisciplinary measures to respond to people's needs on the other hand.

2. International scenario

64. The international community has become increasingly concerned with the issue of adoption, particularly its transnationalization and commercialization. The United Nations General Assembly voiced these concerns in its resolution 41/85 of 3 December 1986 on the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally. With respect to inter-country adoption the Declaration calls for the following:

(a) Inter-country adoption only where a child cannot in any suitable manner be cared for in the country of origin, and the establishment of policy, legislation and effective protection of children involved in inter-country adoptions;

(b) Policies and laws for the prohibition of abduction and of any other act of illicit placement of children;

(c) Placements to be made through the competent authorities, and in no case to result in improper financial gain for those involved;

(d) Prevention of inter-county adoption before it has been established that the child is legally free for adoption;

(e) The legal validity of the adoption to be assured in each of the countries involved and all due weight to be given to both the law of the State of which the child is a national and the law of the State of which the prospective parents are nationals; in this connection due regard to be given also to the child's cultural and religious backgrounds and interests. 29/

65. The 1990 Convention on the Rights of the Child provides further safeguards in article 21, requiring authorization of adoption by competent authorities, exploration of adoption in the country of origin before inter-country adoption ("subsidiarity"), and action against "improper financial gain". The predominant principle is the "best interests of the child".

66. The most recent initiative to concretize rules on inter-country adoptions is taking place under the aegis of The Hague Conference on Private International Law which is drafting a new international convention on inter-country adoptions. 30/ Some of the tenets of the draft include the following:

(a) Provision of counselling facilities;

(b) Assessment of the suitability of the adoptive parents;

(c) Designation of a central authority in each State party which would coordinate with the other State parties;

(d) Accreditation of only those intermediary organizations which can provide necessary guarantees in the pursuit of non-profit objectives;

(e) Mutual recognition of foreign adoptions.

Increasing supervision of the accredited intermediaries is enhanced by this provision: "an accredited organization in a Contracting State may operate directly in another Contracting State only if it is so authorized by the Central Authorities of both States". 31/ The trend is thus to regulate the practices of such intermediaries at both the source and receiving ends. The multilateral framework of this proposed convention does not negate the relevance of bilateral and other agreements which can help to safeguard against abusive inter-country adoptions.

67. Other pronouncements of note include the draft programme of action for prevention of sale of children, child prostitution and child pornography proposed by the Working Group on Slavery and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. 32/ This also bears upon the process of adoption. The approach proposed is pluridisciplinary. It is based upon information and education, social measures and development assistance, legal measures and law enforcement, rehabilitation and reintegration, and international coordination, particularly with key agencies such as Interpol. This converges with the basic premise of this study: laws alone do not suffice and have to be seen as part and parcel of a holistic development framework.

68. At the regional level, there are various conventions and pronouncements such as the European Convention on Adoption of Children in Europe and the Inter-American Convention on Adoption of Minors in South America; these bolster the safeguards for children in regard to adoptions. A number of bilateral arrangements also exist between different countries. These should be maximized in future as a complement to the multilateral perspective.

B. Exploitation of child labour

69. Child labour, or rather work *per se*, is not necessarily detrimental to children. However, when it gives rise to exploitation, usually by another party who has power over the child, the negative consequences for the child's

development and for the child's rights are self-evident. It also produces an incidence of sale precisely because the child becomes the object of a transaction in cash or in kind.

70. There is already substantial literature on the subject, and the coverage provided by the International Labour Organisation is well known. In addition, there have been calls for other international mechanisms to deal with the issue.

71. For this reason, the Special Rapporteur does not intend to delve into all aspects of the child labour problem. Rather, the aim is to underline that there is a close relationship between the sale of children and the exploitation of child labour, and to highlight some of the issues which came to light in the period under consideration.

72. The truth is that in many parts of the world today, children are literally sold into several types of employment, either by their parents or other intermediaries. Some are enslaved from generation to generation due to the debts and other obligations which have impact on families almost in perpetuity.

73. A decade ago, the International Labour Organisation estimated that there were some 88 million working children between the ages of 10 and 14. 33/ The majority were in developing countries and, in terms of numbers, the main region for child labourers was Asia. The pattern is still true today and will remain so, as the projections for the next century indicate that the majority of childbirths will take place in Asia.

74. Several qualifications need to be made in regard to the above. First, statistics are at times deceptive; as the problem is to some extent invisible, there are most probably more children in such situations than is immediately apparent. Second, there is evidently an overlap between the issue of child labour, child prostitution and child pornography. If one were to add all the children abused and exploited in these situations together and classify them as "child labour", the statistics would grow exponentially. Third, the worst forms of child labour exploitation often take place in the informal sector and small-scale industries. As these activities are often beyond view, the situation is likely to be more serious than it seems. Fourth, while it is easy to select illustrations from developing countries, it should be acknowledged that developed countries also face a problem of child labour exploitation, and the problem is deteriorating in certain quarters. Qualitatively, the problem is pervasive. Fifth, precisely because people have become more mobile, and travel more easily to other countries in search of jobs, the advent of migrant labourers and immigrants sheds new light on the old problem of child labour. This is illustrated in the country study found later in this report (see section IV.). While the traditional form of child labour may subside, other forms, involving migrant labourers, immigrants and their children, may emerge.

75. The various categorizations of child labour have already been referred to in the earlier discussion concerning definitions. One of the broadest covers 12 instances: armed conflicts; adult criminal activities; forced labour of abducted children; debt bondage; labour in the unorganized sector;

labour in the organized sector; child prostitution, pornography and sexual exploitation; forced marriages; disabled children in the labour force; domestic labour; apprenticeships and family-supervised labour. 34/ Child prostitution and child pornography will not be dealt with at this stage, as they will be treated in substantive chapters to appear later. Likewise, armed conflicts and incidents of abduction will be treated under a subsequent heading entitled "other forms of sale", as explained earlier.

76. The root causes have already been referred to. Much of the exploitation appears to be a consequence of the pervasive poverty in developing countries. However, economic needs also push children to undertake exploitative work in developed countries. The vicious cycle perpetuates the disadvantages facing children; because children are cheaper to employ and easier to exploit, adults are kept out of the labour market. By relegating children to this exploitation, they are prevented from having access to education and other opportunities which would enable them to develop in accordance with their own rights. Their plight is closely linked with that of their families; unless social interventions and subsidies are also offered to their families, it is unlikely that the latter will facilitate changes of livelihood for the children themselves.

77. A parallel shortcoming is the ubiquitous presence of legislation, and the presumption that laws per se will eradicate the exploitation of child labour. A host of laws do exist at the national and international levels, fluctuating between the trend to abolish child labour and the tendency to regulate it; both approaches are hampered by the fact that law enforcement is poor. Moreover, the behaviour of the private sector which is in the position of exploiter, has not been sufficiently called to account. As noted by an ILO publication:

> "The legal approach has proved to be inadequate to the problems of South America, and in recent years it has been rendered almost impotent in the face of massive poverty. Some have even questioned how rigorously the law should be enforced; in the absence of full employment, realistic minimum programmes and adequate social welfare programmes the prohibition of child work might serve only to augment the misery of many millions of families." 35/

Hence, a pluridisciplinary response?

78. The following situations emerged during the course of 1990-1991 as deserving particular attention in the preparation of this study, precisely because they are interwoven with the notion of sale, in cash or in kind: debt bondage, domestic labour, labour in the unorganized sector (interrelated with migrant labour), and forced marriages. The situation is all the more serious because of the trafficking that takes place between different countries.

79. In the case of debt bondage or bonded labour, according to information received, the practice continues in South Asia despite attempts to eradicate it. The services of children are at times pledged by the parents in payment

of debts. As the interest rates are often extortionate, in effect the debt will never be paid off totally, and a situation of servitude arises with generations bound and bonded as labourers.

80. The incidents of bonded labour are numerous in India. 36/ Although India has outlawed this practice, the realities are more complicated and reflect the truism that laws alone do not suffice. Even with a host of pluridisciplinary measures such as subsidies for the family, flexible schooling for children and alternative occupational opportunities, age-old practices of exploitation do not disappear overnight and require sustained commitments from all quarters, governmental and non-governmental, public and private.

81. Recent developments in Pakistan deserve note. According to the information received, various sectors such as the brick kiln industry are hampered by debt bondage. While a comprehensive law to abolish debt bondage is awaited, the judiciary has stepped in to attenuate the problem to some extent. In a 1988 judgement concerning brick labourers, the Supreme Court ordered the peshgi system of bonded labour to be discontinued. 37/ However, the judgement is reportedly of limited effect as it does not nullify past peshgis; it merely defers those debts for six months. There is thus an urgent need to legislate against such exploitation and to provide a range of socio-economic measures to free people from the shackles of the past.

82. The plight of domestic labourers has been highlighted by the practices concerning children in Haiti. Mainly rural children are handed over by their parents to perform household chores in urban families - rester avec or "restavek" - without pay, and at times in payment of a debt. One report estimates that there are some 109,000 children who are "restavek" and are also subjected to physical abuse. 38/ According to information received, in Sudan, there are cases of children held in slavery who are used as domestic servants, while in Mauritania, slavery persists in one form or another. The situation exemplifies the plight of children used as domestic labourers in other parts of the world. The issue is compounded by the fact that the labour laws of various systems do not accord protection to domestic labourers in general.

83. On another front, there is the question of labour in the unorganized sector. In 1991, several abuses were exposed in Thailand when there were raids on illegal factories. In one case, children were found to have been tortured. The response of the authorities was to impose more sanctions on those in breach of the law, coupled with other forms of social intervention, including alternative facilities for child labourers and assistance for families. However, there remains a large number of mainly rural children unofficially in the labour force, and exploiters from the private sector have yet to be apprehended.

84. The modernization process in China has witnessed a parallel impact on rural children moving to the special economic zones in search of employment, and a concomitant risk of exploitation. The problem of child prostitution reportedly also persists in Taiwan, as will be seen later.

85. The streetchildren phenomenon which confronts nearly all countries of Central/South America, Africa and Asia is closely linked with certain types of activities where child labour is exploited. In Brazil and Guatemala, there have been incidents of violence against these children. The fact that recently some policemen were sentenced for crimes against such children indicates the need to improve the whole process of law enforcement, particularly the quality of law enforcement personnel. This situation is also serious in regard to children used in mines in South America.

86. The issue has a particular poignancy for migrant workers and the children of certain ethnic groups. A recent example concerns Haitian children in the Dominican Republic who are used to cut sugar cane. Some of them are under 14 years of age. In 1990 the Government of the Dominican Republic announced measures to regularize the illegal status of Haitians and to forbid those under 14 years of age from working in the sugar plantations. 39/ Despite such reforms, there are allegations that the trafficking in children and persistence of forced child labourers continues unabated. As this is a transfrontier situation, an obvious step in resolving the problem is to have a bilateral agreement between the two neighbours consistent with basic human rights. Collateral to this, the situation of children of certain ethnic groups employed on rubber plantations in Malaysia exemplifies local concerns even where no transnational movement has taken place.

87. In relation to forced marriages, two recent incidents of note illustrate the fact that developing and developed countries may be faced with similar problems where certain cultural practices are invoked. In India, a Saudi Arabian national was arrested for buying a young Indian girl for marriage. 40/ In Britain, a girl of immigrant descent took action against her immigrant father, alleging that her father had tricked her into marrying a Yemini citizen during a holiday in Yemen. 41/

88. Perhaps the most interesting but regrettable sign of the times is that recently the Governor's Task Force on Child Labour in New York State estimated that some 150,000 children - some as young as 10 years old - were being employed in that State in violation of their rights, particularly in sweatshops producing garments. 42/ The rate of violations of child labour in the United States were the highest since 1938 when the first labour law was enacted.

89. On another front, there are worrying signs concerning the increase in trafficking in children, including for sexual purposes (dealt with later under child prostitution). One case which came to the attention of the Special Rapporteur concerned a young girl, Fatma, who was taken from Bangladesh to Pakistan and exploited as a child labourer. When the Special Rapporteur intervened to inquire about her fate, the reply from the Pakistani authorities was that they were unable to trace her and that she was possibly back in Bangladesh.

90. An offshoot of such trafficking concerns reports of children bought in South Asia and then used as jockeys in camel races in the Middle East. 43/ This is an area where more urgent action and response are required on all

sides. A particular issue to be tackled in the future is how to mobilize the law enforcement personnel to interact more quickly in transnational cases, and how to stimulate the private sector to prevent abuses committed by other members of the private sector against children.

1. National scenario

91. As a general trait, labour laws prohibiting the employment of children under a certain age are found in virtually all countries. The minimum age varies between 12 and 15, with special provisions for others up to the age of 18. However, the legislation in certain countries is geared to prohibitions in certain industries rather than a general prohibition of children under a certain age in all fields of employment.

92. Asian countries have increasingly adopted legislation to combat child labour exploitation. The Indian Constitution contains a stipulation prohibiting employment of children under 14 years of age. The position has been reinforced by the 1986 Child Labour (Prohibition/Regulation) Act. Both Singapore and Sri Lanka have a range of laws which prohibit certain forms of labour (e.g. bonded labour) and the employment of children under 12. Thailand prohibits employment of those under 13. The Philippines has a Labour Code and Child/Youth Welfare Code which offer similar protection to children.

93. What is interesting about Asian countries is that most of them also have national plans concerning socio-economic development and youth development which offer programmes for the eradication of child labour. 44/ There is a realization that laws alone are not enough and that other measures are required, particularly to assist children in education and to help families find an alternative livelihood which would shift the burden of work from the child labourer.

94. Yet, these interventions often suffer from the same problems as those facing the legislative framework: poor implementation and lack of consistent follow-up. While the non-governmental sector has been recognized as a contributor to the process, the participation of these organizations and community initiatives have yet to be maximized to prevent the issue from arising and to help remedy the situation once it has taken place. Likewise, the private sector has yet to be brought in to exert peer-group pressure on other members of the sector to prevent child labour exploitation.

95. On other continents, the pattern of legislation is similar: the laws are there, but the quality of enforcement varies. In Europe virtually all countries have strict laws safeguarding children from child labour exploitation. In France, for example, there is a Labour Code with regulation of employment for those under 18. In 1990 a new law was introduced to protect children who are in the modelling profession; permission is needed from the authorities. In Germany there is a Labour Code with provisions concerning the employment possibilities of those who are over 13 years old.

96. In the Americas, the United States has various laws on child labour. As already noted, it is faced with a large child labour problem. It is not only confronted with illegal labour from the local community but also illegal migrant labour. Illegal child labourers from the Caribbean and Latin America have thus been detained and deported.

97. Brazil has a new Statute of the Child and Adolescent which prohibits employment of those under 14 years of age. Mexico has a similar law. Chilean law compels children to continue schooling until the age of 15, thereby keeping them out of the labour force before then. Yet all the Central and South American countries are faced with the continuing migration of rural people to urban areas, and a consequent streetchildren problem with a potential for crime-linked activities or employment.

98. In Africa, similar laws are to be found. This is exemplified by the recent Constitution of Namibia. Yet, as elsewhere, much is still amiss. In Zimbabwe, legislation has been criticized for being weak on the question of child labour workers, who "for the most part are treated as casual workers or workers involved in piece work (mugwazo) without the rights of permanent employees. The legislation does not specify penalties for underpayment of children". 45/ These examples should certainly not be seen as exhaustive; pockets of abuse and exploitation exist in all countries if subjected to scrutiny.

2. International scenario

99. A large number of conventions and recommendations have evolved under the auspices of the International Labour Organisation. One key convention is Convention No. 138 which provides for the minimum age of employment. However, these instruments suffer from paucity of accessions and weak implementation.

100. The advent of the Convention on the Rights of the Child re-emphasizes the issue of sale linked with child labour. Article 32 recognizes the child's rights "to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development". It calls for pluridisciplinary measures such as legislative, administrative, social and educational measures to:

"(a) Provide a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article".

101. This has been bolstered by regional initiatives such as the recent African Convention on the Rights of the Child. A major task for the future will be the issues of implementation and programme planning to realize specific targets. The need for a pluridisciplinary approach is manifested by the draft programme of action for the elimination of the exploitation of

child labour advocated by the Working Group on Contemporary Forms of Slavery; the strategies include an information campaign to raise public consciousness of the issue of child labour exploitation; educational and vocational training facilities; social action and intervention to tackle the root causes such as poverty and family disintegration; development aid; appropriate labour standards and enforcement by States; state provision, protection and assistance. 46/ The need to target implementation with specific programmes of action at the national level was also highlighted by the 1990 World Declaration on the Survival, Development and Protection of Children. 47/ Indeed, the test will be to ensure that words are operationalized in practice through not only the legislative framework but also comprehensive social mobilization in a given time-frame.

C. Organ transplantation

102. This question is probably the most sensitive component of the sale of children. It is riddled with allegations and counter-allegations, even with an ideological slant. The allegations concern particularly some Central and South American and Asian countries as the "supply" factor and some countries in the West as the "demand" factor.

103. The issue is rendered more complex in that it raises the question whether the term "sale of children" covers the foetus. This is pertinent as there is already some testing of the foetus for scientific and therapeutic purposes; foetus tissue banks exist. 48/ There are concomitant guidelines specifying the parameters of what is acceptable at the national level, but the risk of abuse through commercialization is ever-present. As already indicated earlier, the Convention on the Rights of the Child does not deal expressly with the foetus, although in the preamble to the Convention there is some reference to the need to protect the child "before as well as after birth". Whatever the ambiguity, it is submitted that there is a need to safeguard the foetus from commercialization and sale.

104. What of the sperm, ova and blood? According to the World Health Organization, the term "human organ" is understood to include "organs and tissues but does not relate to human reproduction, and accordingly does not extend to reproductive tissues, namely ova, sperm, testicles or embryos, nor is it intended to deal with blood constituents for transfusion purposes". 49/ The guidelines on human organ transplantation referred to below do not, therefore, cover these elements. However, one should take heed of the call for safeguards against commercialization, as abuses may arise in the process.

105. What of surrogate parentage, when one party agrees to "have a child", for a price on behalf of another woman, usually with the sperm provided by the latter's husband? This has not been analysed sufficiently from the angle of the sale of children. It has given rise to a great deal of complication concerning the custody rights and visitation rights of the concerned parties. In one jurisdiction, custody has been conferred on the couple requesting the surrogacy rather than on the surrogate mother. 50/ However,

the latter is allowed to visit the child. Here again, the dangers of commercialization are all too obvious, and there is a need to underline the humanitarian motives as well as to provide safeguards against those who would exploit the process.

106. The ethics of human organ transplantation is concerned with how to prove whether a "sale" has taken place, and what type of "remuneration" would be allowed the donor party. The World Health Organization has issued the following warning:

> "A feature of organ transplantion since its commencement has been the shortage of available organs. Supply has never satisfied demand, and this has led to the continuous development in many countries of procedures and systems to increase supply. Rational argument can be made to the effect that shortage has led to the rise of commercial traffic in human organs, particularly from living donors who are unrelated to the recipients. There is clear evidence of such traffic in recent years, and fears have arisen of the possibility of related traffic in human beings." 51/

107. There is not only physical, but also structural exploitation, as noted as follows:

> "The use of unrelated living donors raises the possibility of the poor especially in developing countries, where potential unrelated donors are subject to temptation to sell their organs. Such donors may prefer the risk of donation (entailing surgery) to the risk of continuing poverty. While organ and tissue donation for altruism or love may be ethically acceptable, the donation for profit should be deprecated. Active discouragement of the use of unrelated living donors would reduce commercialization of and traffic in organs for tranplantation, in particular traffic involving potential donors from developing to developed countries". 52/

108. The issue may also be related to the abduction and disappearance of children in certain countries, discussed later in this report.

1. National scenario

109. A pattern of legislation is emerging at the national level of increased prohibition/regulation of organ transplantation. 53/ However, the poverty factor which leads to abuses, intermingled with the criminal elements, has yet to be tackled effectively. Interestingly, as seen from the replies to the Special Rapporteur's questionnaire, no Government so far has stated that the sale of children's organs has taken place on its territory. Rather, the position is to refute any allegations of sale. However, some non-governmental organizations do not accept this position. Whatever the facts of the case, prevention is inevitably better than cure.

110. In Africa (Algeria, Egypt, South Africa, Tunisia and Zimbabwe) there is specific legislation on human organ transplantation. In the Americas, direct or indirect legislation is found in Argentina, Bolivia, Brazil, Canada (provincial laws), Chile, Colombia, Costa Rica, Cuba, Dominican Republic,

Ecuador, Guatemala, Honduras, Mexico, Panama, United States and Venezuela. In Europe, there is legislation covering the issue in Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Liechtenstein, Luxembourg, Malta, Romania, Spain, Switzerland, Turkey, United Kingdom and Yugoslavia. The following countries also have relevant legislation: Australia, India (pending), Indonesia, Iraq, Israel, Kuwait, Lebanon, Philippines, Singapore, Sri Lanka and Syrian Arab Republic.

111. Most of these laws prohibit the sale of organs and financial gain therefrom but allow some reimbursement of expenses. Some are more specific than others on the question of children. For instance, the new law in Tunisia (1991) provides that an organ may be removed from a living person on condition that the donor has reached the age of maturity, thereby prohibiting it in regard to children.

112. While the laws do seem to provide broad coverage, how to enforce the law and prevent the problem from arising in the first place is contingent upon not only law enforcement personnel but also community action and vigilance, including the ethics of the medical sector itself.

2. International scenario

113. There is as yet no comprehensive international convention on the question of human organ transplantation. However, the Convention on the Rights of the Child has bearing on the subject in that its recognition of the right to life, the right to health and freedom from abuse, exploitation and trafficking are tantamount to a shield against the sale of children for this purpose.

114. A "soft law" approach is also appearing on the horizon with the World Health Organization's recent adoption of the Guiding Principles on Human Organ Transplantation. 54/ The principles differentiate between cadavers and living persons.

115. In relation to the former, principle 1 states that:

> "Organs may be removed from the bodies of deceased persons for the purpose of transplantation if:
>
> (a) any consents required by law are obtained, and
>
> (b) there is no reason to believe that the deceased person objected to such removal, in the absence of any formal consent given during the person's lifetime".

116. The line between cadavers and the living is drawn in principle 3:

> "Organs for transplantation should be removed preferably from the bodies of deceased persons. However, adult living persons may donate organs, but in general such donors should be genetically related to the recipients. Exceptions may be made in the case of transplantation of bone marrow and other acceptable regenerative tissues.

> "An organ may be removed from the body of an adult living donor for the purpose of transplantation if the donor gives free consent. The donor should be free of any undue influence and pressure and sufficiently informed to be able to understand and weigh the risks, benefits and consequences of consent".

117. More specifically concerning children, principle 4 states:

> "No organ should be removed from the body of a living minor for the purpose of transplantation. Exceptions may be made under national law in the case of regenerative tissues".

118. Other principles of note include principle 5:

> "The human body and its parts cannot be the subject of commercial transactions. Accordingly, giving or receiving payment (including any other compensation or reward) for organs should be prohibited";

and principle 8:

> "It should be prohibited for any person or facility involved in organ transplantation procedures to receive any payment that exceeds a justifiable fee for the services rendered".

119. While these principles indicate the need for countries to adapt their legislation to international pronouncements, much will depend upon how to prevent the problem from arising in the first place. There is the structural issue of how to tackle the poverty factor on the supply side, and how to ensure that the demand side abides by humanitarian rules. In such context, the role of doctors and medical ethics necessarily complement law enforcement and other preventive strategies.

D. Other forms of sale

120. There is a residual category involving sale of children which deserves attention. This includes, inter alia, child soldiers and abducted children. These two groups were not covered specifically at the time when the questionnaire (see annex I) was prepared by the Special Rapporteur for circulation internationally. However, during the course of the year, problems concerning these two groups emerged in various circles, and thus merit closer scrutiny. The assessment here is tentative, and a questionnaire should be circulated in future to review governmental and non-governmental responses to the problem. This should be coupled with more direct fact finding and data building to provide updated empirical evidence.

121. The question of child soldiers is closely related to that of child labour exploitation. The root cause, in this respect, is the presence of war itself whether at the national or international level. Numerous instances of armed conflicts in recent years have witnessed the use of child soldiers, including, inter alia, the conflicts in Afghanistan, Angola, Cambodia, El Salvador, Guatemala, Iran (Islamic Republic of), Iraq, Myanmar, Namibia,

Nicaragua, Peru, Philippines, Sri Lanka, Sudan and Uganda. The issue is also related to the use of refugee children who are conscripted into the army in the vicinity.

122. Part of the problem arises from the varying criteria concerning the age of conscription. In principle, the age ranges between 15 and 18 but in practice, much younger children are found to be child soldiers.

123. Some international protection is accorded under the international humanitarian law instruments. In the case of international armed conflicts, the 1977 Protocol I Additional to the 1949 Geneva Conventions stipulates in article 77 (2) that:

> "The Parties to the conflict shall take feasible measures in order that children who have not attained the age of fifteen years do not take part in hostilities and, in particular, they shall refrain from recruiting them into the armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest". 55/

124. In the case of non-international armed conflicts, Protocol II Additional to the 1949 Geneva Conventions stipulates in article 4 (3) that:

> "(c) children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities". 56/

125. These provisions suffer from the fact that many countries have not yet ratified the Conventions, and violations persist even where there have been ratifications.

126. The more recent Convention on the Rights of the Child contains a diluted version of the norm concerning child soldiers in article 38:

> "2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take part in hostilities.
>
> "3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest".

127. The threshold age of 15 is too low and should be raised to 18 in accordance with the definition of the child offered by the Convention. Much will inevitably depend upon how the military can be convinced to abide by the law. The dialogue to protect children is most crucial at this level.

128. Interestingly, in regard to refugee children, the position of the United Nations High Commissioner for Refugees is reflected in its Guidelines on Refugee Children which advocates the position that children should be safe from armed conflicts and should not be recruited into the armed forces. 57/ Unfortunately, the reality is more disillusioning with many refugee children forced into the armies of conflicting parties. This is an integral part of the protection of refugees where international law needs to be enforced even more emphatically.

129. With reference to the other group of children of concern to this section - abducted children - there is a close relation to the question of sale for adoption, on the one hand, and sale for other purposes, such as child prostitution and organ transplantation, on the other hand. Trafficking in children was highlighted most glaringly in 1991 when children and photographs of other children were found in Berlin in connection with the kidnapping and selling of children. 58/ An international ring had abducted the children from Eastern European countries with a view to trading them in Western European countries, probably for adoption. As noted by one report on inter-country adoption:

> "Often child traffickers are part of extensive networks. In some countries lawyers and notaries, social workers (even in some cases those appointed by the courts), hospitals, doctors, children's institutes, sometimes turned into complete baby farms, and others work together to obtain children and make profit out of the despair of parents, in particular women, in difficult situations, sometimes by deceiving them. A basic principle of such networks is often that the various intermediaries operate without knowing each other". 59/

130. The legal position on the subject is unequivocal: it is a criminal offence which the criminal law of any State would punish. Morever, the Convention on the Rights of the Child underlines the position in article 11 which provides that "States Parties shall take measures to combat illicit transfer and non-return of children abroad" and in article 35 which stipulates that "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form".

131. On the one hand, there is more room to address the demand factor by raising awareness of the problem among potential customers. On the other hand, transfrontier cooperation requires not only better coordination between law enforcement personnel and more vigilance on the part of the community but also social intervention measures to care for and return the child to the original parents as soon as possible. This is already legislated to some extent in regard to the abductions which may arise from marital conflicts, as encompassed by The Hague Convention on Child Abduction of 1980. In future, the safety net of the law should be extended to the whole range of child abduction and trafficking, and multilateral, bilateral and regional arrangements may be explored further in conjunction with Interpol.

II. CHILD PROSTITUTION

132. "Shabmeher was apparently taken from the house where she had been working as a maidservant by a female agent who subsequently sold her for 2,000 taka (approximately $60) to the Tanbazar brothel in Narayanganj. Refusal to comply with the wishes of the Sardanis ('madams') in the brothel resulted in merciless torture being inflicted on her after which she was found in an unconscious and miserable condition in a running train. Although her body was rescued, she died a tragic death at the hospital." 60/

133. This incident in Bangladesh exemplifies the cruelties facing many child prostitutes today; it should not be taken as an isolated incident. The underworld in which girls and boys are immersed spreads its tentacles far and wide, across countries and continents. The issue is certainly not only that of the developing world but also of the developed world. There are transnational connections at work, abusing and exploiting children, and ensuring that the issue remains opaque and elusive.

Context

134. The word "child" is taken to mean those under 18 years of age, in accordance with the Convention on the Rights of the Child. The definition for child prostitution given by the questionnaire circulated by the Special Rapporteur in 1991 (see annex I) refers to "the sexual exploitation of a child for remuneration in cash or in kind, usually but not always organized by an intermediary (parent, family member, procurer, teacher, etc.)".

135. As noted earlier, it is often linked with the sale of children precisely because there is a transfer of the child from one party to another for some kind of reward. The tragedy is exacerbated by the fact that in some parts of the world, it is parents who sell their children into prostitution either wittingly or unwittingly.

136. The root causes are self-evident. Poverty rears its head consistently in developing countries, but it also emerges in so-called developed countries where there are pockets of the disadvantaged. Because many families are unable to support their children, the latter become easy prey for the trade that lurks beyond. This is compounded by family disintegration, including incest and domestic violence and migration from rural to urban areas and from one country to another in search of a livelihood.

137. If there is "supply", there is also "demand". Criminal elements wait in the wings to lure or trick many children into prostitution. Sometimes they are drugged into the process. The customers are at times aware, at times unaware of the plight of these children. More often than not, it is a matter of indifference; a careless "I don't care" attitude because their basic aim is sex. If they do care, it is usually for their own health.

138. Hence, in some areas of the world, the customers are opting more and more for younger prostitutes, particularly virgins, in the belief that they will protect themselves from the threat of AIDS. The market is spiralling

towards the very young; the prices escalate accordingly. Although in most countries the existing law, particularly the criminal law, can be interpreted to apprehend customers (if there is a will to do so), this is a far cry from reality. More often than not, they are beyond the scope of the law. This is compounded by the fact that the service industry where prostitution is found has not been called upon sufficiently to exert peer-group pressure upon those members of the industry who would otherwise abuse the system.

139. This study does not pass judgement on the pros and cons of adult prostitution. However, child prostitution should not be allowed precisely because it undermines the child's development and is in breach of the child's rights. In this respect, it is interesting to note that the law against exploitation of child prostitutes exists in all the countries covered by this study. It may take the form of a specific law on child prostitution or a more general form such as the Criminal Code. Yet, enforcement is poor in many settings. The need for other measures of a pluridisciplinary nature to prevent the problem from arising in the first place is not always satisfied; the law is then left in a void and becomes ineffectual.

140. If there is a problem with the content of national law itself, it is the question of the age of consent and its interrelationship with child prostitution. Although in principle no child prostitution should be permitted for those under 18 years of age, as defined by the Convention on the Rights of the Child, many countries set the age of consent for sexual intercourse at a threshold below 18, usually between 13 and 17. In some contexts this means that the customer is exempted from responsibility if the child prostitute consents, even though the latter is under 18 years of age. This discrepancy may lead to a situation where the law enforcement authorities would be reluctant to act, particularly if the child prostitute is considered old enough to consent but yet is younger than 18.

141. One is also struck by the passivity of law enforcement authorities in many countries. The laws are usually there to enable the police to intervene, if they so choose, to liberate the girls and boys from the brothels. However, law enforcement personnel often turn a blind eye, precisely because they do not think it worth their while to activate themselves to help others. In their mind, they are so badly paid from official sources that their rationale is often not to bother to implement the law.

142. In any case, they may have a hand in the process itself either through blatant corruption or collusion. This is particularly the case with the local police in many countries. If there are to be raids on brothels to save children from exploitation, one may have to resort to other units, such as the federal special police, to override the power of the local police. The message is that the community needs to be vigilant towards all sections of the law enforcement agencies.

143. The context is more depressing because there are transnational elements at work, trading and trafficking across borders. This may take the form of abduction or other modalities such as false identification and documentation, and sham marriages. There is also a nexus with other forms of abuse such as

child pornography and narcotics. At another level, the rise of tourism, particularly sex tourism, increases the impact of transcontinental prostitution. 61/ The flow is two-way; the supply factor may physically move to the demand side, or the demand factor may move to the supply side.

144. One should not underestimate the cultural influences at play, including traditional beliefs and gender discrimination. In some settings, there is a class system that perpetuates the use of young girls in prostitution. There also exists the practice of handing over young girls to become "sex goddesses" in certain regions of the world. 62/ Meanwhile, gender discrimination may imply that girls are given fewer opportunities for education and alternative occupations, thereby relegating them to prostitution. Traditional taboos and stigmas aggravate the plight of prostitutes who wish to change their livelihood, and the rehabilitation process is rendered more difficult because of societal attitudes that discriminate against rather than empathize with child prostitutes. The paradox is inherent in this observation:

> "Prostitution is tolerated, rather accepted as a necessary social evil, an inevitable and integral part of civilization ... Public opinion is that prostitutes are not the victims of society's apathy but that only morally loose women get into this profession. This, however, is untrue". 63/

145. The challenge is directed at society itself in terms of its consciousness of the problem and its willingness to help. There is thus a key role for education and consciousness-raising to motivate members of each society to prevent the problem from arising and to assist child prostitutes in finding remedies, without being confined to an attitude of apathy and fatalism.

Typology

146. The range of child prostitution varies from individual cases to mass victims of organized crime. This may encompass a selection of children, some runaways from home or from State institutions, some sold by their parents, some forced or tricked into prostitution, some streetchildren, some part-time and some full-time, some amateurs and some professionals. Although one tends to think first and foremost of young girls in the trade, there is an increase in the number of young boys engaged in prostitution in various parts of the world. The most disquieting cases are those who are forced into the trade, particularly girls. This is subject to the following qualification pertinent to Europe and North America:

> "Girls are not all necessarily simply forced into prostitution, for some may themselves be on the look-out for a pimp while the pimp in turn is on the look out for a girl. They often meet through friends or acquaintances". 64/

147. However, many cases have arisen, particularly in Asia, where untold cruelties have been inflicted on child prostitutes ranging from incarceration to homicide. 65/

148. The types of sale and trafficking include the following:

> "a. Procurers and criminal organizations sell children to brothels either in a country or abroad.
>
> b. Procurers and criminal organizations supply children to clients.
>
> c. Individual paedophiles acquire children for their own use.
>
> d. Paedophilia organizations acquire children for their members". 66/

149. One source lists the following routes of transnational trafficking:

> "(1) from Latin America to Europe and the Middle East
>
> (2) from South-East Asia to Northern Europe and the Middle East
>
> (3) international regional market in Europe
>
> (4) traffic from various regions of Africa
>
> (5) Arab regional market." 67/

150. A recent assessment identifies some of the routes as follows: from Martinique, Guadeloupe and North Africa to France; from Latin America to Spain and Portugal; from Suriname to the Netherlands; from Lagos to Rome. 68/ As the "country study" will reveal later, there is strong evidence of Latin American and African prostitutes in Europe as part of an international traffic in sex. While the majority are adults, there may be some hidden cases concerning child prostitutes. The link between the routes of trafficking and the networks is found not only between developing and developed countries but also between developing countries. This is exemplified as follows:

> "Most professionally organized sexual exploitation of children was found to be present in all the countries studied. In the Philippines, in Thailand, and in India networks covering the whole or parts of the country were registered. These networks have agents that systematically recruit children into prostitution, through bribery, threats and kidnapping. Recruitment in neighbouring countries is also common. Children from Burma are for instance being recruited into Thailand, and children from Nepal and Bangladesh go to India." 69/

151. The situation is rendered more complex by the statistics debate. In one country, there is a debate as to whether there are really 800,000 child prostitutes or whether this is a gross exaggeration. The available statistics are often out of date; for this reason, this report does not wish to delve into exact computations of statistics, precisely because they are incomplete.

152. As a whole, it may be said that the numbers are highest in Asia and Central/South America. According to information received, there are tens of millions of streetchildren in these regions. The linkage with prostitution is, therefore, not difficult to perceive. There are also reports of an increase in child prostitution in Africa, North America and Europe. However, the problem is to be found everywhere, and bearing in mind the demand and supply in regard to transnational prostitution, the issue is relevant to all countries.

National scenario

153. As already indicated, laws which could be used to apprehend exploiters of child prostitution are to be found in virtually all systems. Examples in North America include the various state laws in the United States and the Canadian Criminal Code. In Europe, the Criminal or Penal Code provides protection to children in virtually all countries including Bulgaria, Czechoslovakia, Denmark, France, Germany, Italy, Netherlands, Norway, Spain and Sweden, although the age of consent varies by country. There is also specific legislation on children and young persons which defines the powers of the police in such matters, e.g. in the United Kingdom.

154. In Asia, the pattern of legislation is similar. Provisions in the Criminal or Penal Code exist in such countries as Bangladesh, Japan, Philippines and Thailand. Specific legislation on children and sexual exploitation can be found in such countries as India, Sri Lanka and Thailand. Some traditional practices which could lead to children being used in child prostitution, such as the Devadasi custom of deifying young girls (who ultimately fall into prostitution), have also been banned by law, e.g. the Indian Devadasi Prohibition of Dedication Act. However, the custom persists in practice.

155. In Central/South America, there are parallel criminal laws or specific child-related laws which can be used to protect children from sexual exploitation. Innovations include the new Statute of the Child and Adolescent 1991 in Brazil which provides more decentralized measures against child exploitaion.

156. In Africa, the juridical situation is similar with either a criminal code or specific child/youth law bearing on child prostitution in all countries.

157 Some of the developments at the national level which were cause for concern during the 1990-1991 period included the following:

(a) In the South-East Asian region, the problem has become more transnational. Allegations have been received concerning girls being traded from Myanmar, the Lao People's Democratic Republic and China (particularly from Yunan) into neighbouring South-East Asian countries. The opening up of Indochinese countries, such as Viet Nam, to commerce in general will also have implications for the trade in child prostitutes. Likewise, this problem will probably appear more in China in future. For some time now, there have also been reports of large-scale child prostitution in Taiwan. 70/ Countries which were not previously noted for the child prostitution problem, e.g. Singapore, are now facing the problem more openly;

(b) In South Asia, the transnational nature of the problem is long standing in regard to the flow of Bangladeshi and Nepali women to India. 71/ Countries such as India, Thailand and the Philippines, which reportedly have a heavy case-load of prostitutes, are becoming more burdened with the AIDS question and the impact of that disease on child prostitutes. Many of the local girls (and boys), and girls brought in from other countries, have tested HIV positive. In Thailand, particularly as regards the latter group, the legal framework itself may regrettably discriminate them in three ways: they are illegal because they are prostitutes in breach of the law concerning prostitution, they are also illegal because they enter the country in breach of the immigration law, and they may also be subjected to discrimination because of the relevant anti-AIDS law, policy, or practice. If they are deported to their country of origin, there are insufficient guarantees to protect them upon arrival in that country. Nor are sufficient support services provided to facilitate their return to a normal life;

(c) According to information received, sex tourism continues unabated in Asia, at both the national and transnational levels. Sex tourism involving local customers is often neglected in the press in favour of transnational sex tourism; numerically, however, there may well be more local people than foreigners who resort to the services of child prostitutes. Hence the need to raise the customer's consciousness, promote changes of behaviour and inculcate a sense of consumer responsibility in general. From the transnational angle, the customers come from many parts of the world, including Europe, North America and Asia, particularly Japan. They may be military personnel who are stationed nearby, as in the case of the Philippines. They may be brief cross-border visitors, as is the case of Malaysian tourists who visit southern Thailand for sexual services. A number of foreign prostitutes, including Thais, Indonesians and Filipinos, are apprehended and deported annually from Malaysia. 72/ Throughout the whole region, paedophiles from far and wide come for sexual services, at times under the cloak of charitable organizations. These paedophiles often link up with local agents, as noted in this comment on Sri Lanka:

> "Agents are found almost everywhere and the networks and syndicates - both foreign and local or local with foreign tie-ups - are deadly to contend with and more or less dominate the scenario in these tourist resorts, using thugs and hoodlums to bolster this power". 73/

If they are deported from one country, they may try to enter neighbouring countries in search of alternative services. On a more positive front, countries are now beginning to exchange lists of paedophiles deported for misconduct so as to prevent them from entering neighbouring countries. However, travel agencies and tourist organizations are reticent to adopt a policy on prostitution, particularly child prostitution. Ironically, it is the advent of AIDS which is reducing sex tourism in certain quarters;

(d) Many Asian countries have adopted socio-economic plans and youth plans to help children and their families. This concerns prevention and cure. The former entails more support facilities to help children go to school and to prevent families from selling or permitting their children to enter the sex trade. The programmes may include subsidies for families and the children, and alternative occupation. However, as in the legal field, implementation is weak, and budgetary allocations are often lacking. The lack of funds is particularly evident in the Philippines, as much of the national income is used to pay off a huge external debt incurred as a consequence of the mismanagement of the past. Likewise in the rehabilitation process, support facilities to enable child prostitutes to change their livelihood are not always forthcoming. Moreover, protection of children who wish to return to a normal life is not always guaranteed, particularly in transnational cases. In this regard, there have been reports of Myanmar children who, deported from neighbouring countries, are then subjected to cruelties at the hands of the authorities in their country of origin, instead of being assisted in a humane manner;

(e) Countries of the Middle East tend to deny that the problem exists in the region. However, it is reported that some citizens of these countries travel to other countries in search of sexual services. This is evident in South-East Asia. Meanwhile, the flow of migrant workers from other regions to the Middle East does not rule out the possibility of a trade in sex with consequences for child prostitution in those countries;

(f) In the developed regions of Europe and North America, economic considerations, domestic violence and abuse, family disintegration and drug addiction are increasingly recognized as factors leading to the increase in child prostitution. Organized crime is also involved. A recent source from the United States notes the following:

> "(Child prostitutes) enter prostitution either as a result of their vulnerability as streetchildren (throwaway children or runaway children), by the actual sale of the children by parents or guardians or through such activities by the children to make money for a variety of reasons (e.g. purchase drugs, poverty, etc.). Many of these children work for individual exploiters on the street, from houses, or via sex rings in which they are transported across state lines to provide services." 74/

Likewise in Canada, where there is an increase in the number of younger boys and girls in the sex trade. As noted by a recent source, many of them do not perceive themselves to be indulging in prostitution but to be making ends meet: "ils se debrouillent pour arriver a vivre". 75/ Some have returned to the streets after being institutionalized in state facilities; this reflects on the poor quality of some of these facilities and the failure to offer the children viable alternatives. Paedophile rings are also reported to operate between the countries of this region, at times in close communication with the demand for child pornography, e.g. United States, Belgium and France;

(g) In Europe, the issue of runaway children is ever-present, and correlation with street prostitution is strong. The situation is evident in such countries as France, the Netherlands, Spain and the United Kingdom.

According to information received, the situation in Spain may be related to the rise in number of beggars, a proportion of whom are from neighbouring Portugal. There is also a rise in prostitution among migrant groups in Europe, as seen in the "country study" provided later. This issue is aggravated by the continual flow of prostitutes from Asia, Africa and Central/South America to the countries of the North. Many enter illegally, and some would be under the age of 18. If the local authorities turn a blind eye to the problem, they are allowed to stay. If not, these "illegals" are subjected to detention and deportation. Humane safeguards for the process of return to their country are not necessarily guaranteed. Conversely, many customers of child prostitutes in developing countries come from North America and Europe. Paedophile rings also operate in the process;

(h) In Africa, there are increasing reports of child prostitution. The problem has been noted in Senegal where there is a linkage with tourism. Burkina Faso has witnessed this problem in relation to the search for a livelihood among the young and destitute. In Zimbabwe, the problem is related to the sex trade near its border areas; again it is the poverty factor which drives children into the trade. The Sudan, Kenya and Libya are all on the list of countries facing the challenge. Meanwhile, Algeria has been reported to be a place of transit for traffickers. At a recent regional conference in Côte d'Ivoire, there was recognition of child prostitution as a growing problem. 76/ The issue has become increasingly transnational with an increase in African prostitutes travelling to Europe and elsewhere; children may also be a hidden element of this group;

(i) Central/South America is generally known for the huge numbers of streetchildren, and the linkage between that environment and prostitution is strong. 77/ Child prostitutes are present in large numbers in such countries as Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico and Peru. Although this region seems to be a less important destination for sex tours compared with Asia, one should not forget the rising number of women from this region who travel to the North in search of a livelihood. Here again, children may become candidates for trafficking and migration to the more developed countries. Many countries in this region are now taking more pluridisciplinary measures to tackle the root causes, including the enactment of new laws and the formulation of new child policies, as in Brazil. However, the enormous debt burden of these countries makes it difficult to allocate sufficient resources to meet the needs of families and their children. The structural imbalances created by this burden and the inequitable structures at the local level take their toll in terms of the root causes of child prostitution and the efforts to mitigate these causes;

(j) Although the Western Pacific region is not known for having a large number of child prostitutes, a number of people from these countries take part in sex tourism, particularly to South-East Asia. There are also sporadic reports of paedophile gangs operating in Australia and seeking contacts in New Zealand;

(k) It should be noted that a wide range of non-governmental organizations are operating at the field level to attenuate the root causes of child prostitution and to offer help where the problem has arisen. 78/ This varies from projects to help families in social development to hotlines to help children in difficulties and emergency homes to shelter the abused. If their efforts are drops in the ocean, they may cause significant ripples in terms of advocacy and consciousness raising. Yet, their work is often daunted by the huge scale of the problem and the lack of sufficient funds and resources. Where they are able to initiate projects, there is at times insufficient coordination with their non-governmental and governmental counterparts, thereby rendering their operations piecemeal rather than comprehensive. They are also faced with the question of how to sustain their efforts on a long-term basis and how to generate a pool of funds. In many settings, their initiatives are not helped by the lack of incentives from the Government, especially as the latter may be wary of them or may refuse to yield to their request for tax exemptions and other incentives;

(l) The participation of the community and of the prostitutes themselves has not been maximized so far. This is based upon the truism that child prostitution is a community problem, and the community should be activated to help prevent the problem and provide remedies as necessary. This is evident in regard to child protection and law enforcement; the police alone would not have sufficient manpower to undertake such a task if the problem is extensive. It is the community itself which should thus take vigilant action. Likewise, the role of prostitutes and child prostitutes should not be underestimated, as it is they who may provide the channels to reach other children who are caught in the underworld and thus render assistance. Indeed, ex-prostitutes and ex-child prostitutes may become role models for other child prostitutes in the process of rehabilitation and adaptation to a new life;

(m) Too little reference is made to the issue of child prostitution and other forms of child abuse and exploitation in formal and non-formal education in all countries. As knowledge itself is an empowerment process which can help to warn children about potential threats to their safety, it is imperative that the issue be raised in the classroom setting so as to prepare children to the realities beyond the classroom. Particularly in countries where education is only compulsory for the duration of primary school, that period is essential for raising the level of consciousness about social problems that surround children and families, particularly sexual exploitation. After that, the children themselves may have few opportunities for education, and in seeking to enter the labour market, they may be lured into the very professions that they should avoid, including the sex trade. The preventive impact of education should not be underestimated and should be enhanced. The mass media also have a catalytic role to play in educating the public about the problem and in monitoring the situation. In this respect, there is a need to avoid sensationalism and to provide responsible and responsive news to members of the public so that they will empathize with the plight of child prostitutes.

International scenario

158. The approach at the international level varies between the "hard law" in the form of international Conventions to the "soft law" in the form of persuasive pronouncements.

159. There have been a host of international conventions touching upon the issue of slavery and sexual exploitation dating back to the early part of this century. One of the more frequently cited is the 1949 Convention on the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others. Basically, it legislates against procurers and exploiters of prostitutes rather than the prostitutes themselves. The 1979 Convention on the Elimination of All Forms of Discrimination against Women also provides in article 6 that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women". 79/

160. The earlier conventions suffered, in particular, from a paucity of accessions by States and the lack of a monitoring mechanism. All of them have been impeded by poor implementation at the national level. Moreover, the legalistic approach advanced by some of these instruments fails to call for the pluridisciplinary approach required to address both prevention and cure.

161. More specific attention was paid to children in the 1959 United Nations Declaration on the Rights of the Child with its call for protection of children from child neglect and exploitation. This has burgeoned into a new convention. The advent of the Convention on the Rights of the Child is another milestone in the process. The exhortation is as follows (art. 34):

> "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
>
> (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
>
> (b) The exploitative use of children in prostitution or other unlawful sexual practices..."

162. Implementation is again a daunting challenge, and this is where the "soft law" approach may be instructive. Most relevant is the draft programme of action for the prevention of the sale of children, child prostitution and child pornography advanced by the Working Group on Contemporary Forms of Slavery and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, referred to earlier. 80/ The programme calls for better law enforcement and more cooperation between key organizations such as Interpol and United Nations agencies. Its multi-pronged approach includes the following, *inter alia*:

(a) Information and education

- (i) An international information campaign to raise public consciousness, including participation of religious and lay organizations and the media;
- (ii) Improvement of the sources of information;

- (iii) Provision of educational measures to raise awareness of the issue;
- (iv) Alternative educational programmes for streetchildren;

(b) Social measures and development assistance

- (i) Development activities to tackle poverty and aimed at improving the conditions of women and children;
- (ii) Projects to protect streetchildren from sexual abuse and help them to reunite with their families;

(c) Legal measures and law enforcement

- (i) Preventive legislation to protect children and provision of legal aid;
- (ii) Severe penalties for consumers and procurers;
- (iii) Punishment of the intermediaries and confiscation of proceeds from their activities;
- (iv) Accession to relevant international treaties and implementation;

(d) Rehabilitation and reintegration

Interdisciplinary programmes to assist the rehabilitation and re-integration of victims and their families;

(e) International coordination

Bilateral and multilateral cooperation among law enforcement agencies.

163. More specifically, the programme calls for stronger legal measures against sex tourism, greater attention from tourist agencies to prevent the problem, prevention of abuses by military personnel and regulation of new forms of technology which may be used for soliciting prostitution.

164. These proposals should be commended for their pluridisciplinary approach, and should be taken up seriously by States and others involved in protecting children. As a complement to these measures, attention should also be paid to the need for national action plans and targets to reduce child prostitution. This is implied by the 1990 World Declaration on the Survival, Protection and Development of Children. Thought should also be given to evolving indicators of progress so as to assist in monitoring and evaluating progress, with the compilation of relevant disaggregated data (e.g. separation of data concerning the different genders and target areas).

165. The multilateral approach can be paralleled by bilateral and regional initiatives, exemplified by the recent African Charter on the Rights of the

Child. These include transfrontier agreements to eliminate the traffic in children and ensure their safe return to the country of origin. Exchange of lists of criminals may also assist in tracking transnational operations.

166. From the angle of an international development strategy, there is much more room for international aid agencies to support programmes to eradicate child exploitation. The world financial institutions should be encouraged to attenuate the conditions of repayment by linking them with the mitigation of national and local problems facing children and their families. Restructuring of aid and assistance is required at both the national and international levels, bearing in mind the need to consult the target groups and ensure the participation of the child prostitutes themselves.

III. CHILD PORNOGRAPHY

167.

> "The next step in grooming me for sexual exploitation was with photography - which I've now come to learn is a staple of many paedophile's existence. At first he took pictures of me clothed, and since everyone knew about Alex's interest in photography, this seemed perfectly normal, and in fact, my family was delighted with those first photos. Alex coaxed me to take off my clothes. First it was my shirt ... then he wanted me to try it without my jeans on."

168. This statement to the Permanent Subcommittee on Investigations' hearing to probe the link between child pornography and molestation in the United States in 1985 exemplifies the subtle manner in which some child pornographers work. 81/ At times, there is a family connection. At times it is through a figure already familiar to the child. The process itself is tantamount to child abuse and may lead to other forms of child exploitation, such as child prostitution. Conversely, it may be the consequence of other forms of child exploitation.

Context

169. The word "child" is again taken to mean those under 18 years of age, as stipulated by the Convention on the Rights of the Child. The term "child pornography" has given rise to several interpretations, including the following:

> "Any visual or audio material which uses children in a sexual context." 82/

> "A permanent record of a child being sexually abused by an adult." 83/

> "A visual depiction of anyone under the age of 18 engaged in explicit sexual conduct, real or simulated, or the lewd exhibition of the genitals. Explicit sexual conduct includes but is not limited to: vaginal intercourse, anal intercourse, fellatio, cunnilingus, and analingus." 84/

170. The questionnaire circulated by the Special Rapporteur (see annex I) took as the starting point the following definition: the visual or audio depiction of a child for the sexual gratification of the user, and involves the production, distribution and/or use of such material.

171. The root causes of child pornography are both socio-economic and cultural, both criminal and medical. Economic needs, interlinked with the decline of the family, may lead to abuses against children. The causes of child prostitution may ultimately become the causes of child pornography and vice versa. On the other hand, there are criminal elements at work, seeking to exploit the child. At times it is organized crime, at times it is individuals who would abuse the child. Interestingly, not enough has been said about the medical implications of the process. The psychological distortions of the abuser have not been addressed in detail in the information available for this study. Is it a criminal problem or a psychological problem?

172. The question has become more intractable due to the advent of new technology, and the potential use of computers, videos and telephones as means of conveying pornography. In this regard, the laws that exist may be too slow to keep track of technological developments.

173. The issue is rendered more complex due to the debate concerning the standard of proof for pornography. In some jurisdictions, the test is whether the material concerned is "obscene". Does the latter imply material that is intended to deprave and corrupt, and if so how subjective or objective a test? Others have now relinquished this test due to difficulties of proof. A related question is whether the law should cover those who merely use or possess the material, as well as those who distribute and manufacture the material. There is still no consensus on this. While national laws generally prohibit the latter situation, the former is still uncovered in many instances, thereby exempting the consumer/customer from liability. In addition, there is the question of whether the law covers pornographic performances.

174. There are also continual debates concerning whether material is actually produced in a certain country or whether it is merely distributed there. This is seen in the "country study" provided later in this report (see section IV). Matters become more complicated because of the thin line between individual/amateur productions of pornographic material and commercialized/professional activities, especially as the former may ultimately lead to the latter. As noted by one non-governmental source:

> "The child pornography which is found on national and international markets has its source in both amateur and professional circles, and it is by no means clear that there is a vast and profitable industry involved. Nevertheless, it is clear that the professional film makers who are involved also produce 'soft' pornography and sometimes more reputable products." 85/

Typology

175. Different types of pornography arise due to a variety of causes. The typology could comprise the following:

> "- parents make children appear in pornographic films;
>
> - many runaway children become models in order to earn their living;
>
> - children are specially procured for pornography and prostitution;
>
> - children are sold by their parents in order, for example, to relieve their own drug or alcohol problems;
>
> - parents (mostly the mothers) themselves work as models in pornography and introduce their children into the industry." 86/

176. The abuse of children and traffic in child pornography are closely related, and there are different dimensions ranging from the small scale to the large scale:

> "(a) solo sex rings: an adult gathers children around him and sexually abuses them either as a group or singly
>
> (b) sex rings in which children are swapped between adults who are acquainted with each other and exchange children as well as pornographic material
>
> (c) syndicated rings: well structured and for which children are recruited. Pornography is produced and direct sexual services are provided for an extensive network of customers." 87/

177. The situation has become more critical due to the transnationalization of the problem. Although many pornographic materials are produced in the West, there is use of children from developing countries for this purpose. Likewise, the "demand" side may travel to the latter in search of candidates for abuse.

National scenario

178. Legislation at the national level varies in content and impact. Many countries do not have specific laws on child pornography but various laws on "morality" and "public health and order", including the Criminal or Penal Code, may be used to protect children in this situation. The approach also diverges between those which punish customers, as well as manufacturers and distributers, and those which do not punish customers. There is equally a grey area concerning the age criterion for the child and the different age thresholds for the consent factor in child abuse. This was already referred to earlier in the context of child prostitution.

179. The largest market for child pornography is in the United States; it is a multi-million dollar business. A non-governmental source made a recent comment on the situation as follows:

> "Child pornography is produced largely by individuals for personal use and is shared with acquaintances who share similar interests. It is also produced for sale and distribution here and abroad in photo, film and video form. Much of this is apparently distributed among members of paedophile support organizations and in more informal networks. Multi-million dollar US organizations have been identified and subject to arrest in the US. Several years ago, the infamous 'Black Kathy' organization resulted in several arrests. This typical group made millions of dollars kept in German banks by producing and distributing child pornography. Most such US-organized child pornography operations are international in scope ... (It is) not possible to discuss child pornography in isolation from child prostitution. Eighty to 90 per cent of child prostitutes have been victims of child pornographers." 88/

180. The law in the United States has undergone substantial changes. There has been a shift away from the test of whether a material is obscene. As a result of case law and the Attorney General's Commission on Pornography:

> "Sale or distribution of any photographic depiction of a real child engaged in sexual activity was made unlawful, regardless of whether the photograph, or magazine, or film was or could be determined to be legally obscene." 89/

181. Virtually all State laws in the United States now prohibit the production and distribution of child pornography irrespective of whether it is obscene. However, the situation of the person who merely possesses the material varies at the State level. This poses a particular problem for the trade in child pornography across State boundaries.

182. In Canada, although non-governmental groups have voiced concern in regard to pornography in general, there has been less coverage of child pornography. The law is based upon the Criminal Code, interlinked with municipal rules. The test of whether material is obscene is applied. Pornographic materials are both produced in the country and imported from other countries, such as the United States.

183. In Europe, in recent years, there has been a rise in investigations concerning child pornography. This is particularly the case in the United Kingdom where the police have been called upon to investigate more cases each year. There are also fears that with the opening up of the single market in Europe in 1992, there will be more circulation of pornographic materials from continental Europe to the United Kingdom. Various forms of legislation, including the Obscene Publications Act and various child-related laws concerning protection of children (e.g. 1989 Children Act), confer broad powers upon the police to intervene where the child is likely to suffer significant harm. There are also specialized child protection teams dealing with the issue, staffed by police and social workers. Currently, mere

possession of an indecent picture of a child is also an offence. However, it is known that paedophiles from the country travel to other countries such as the Netherlands, Portugal, Thailand and the Philippines in search of victims. They would then record the children on video and distribute it to others.

184. Cases of child pornography in Denmark and the Netherlands in the past decade have also led to law reform and the prohibition of child pornography there. This is also seen in the "country study" (see section IV).

185. Reforms concerning the criminal law of these countries now better protect children from pornography, at least in principle. There is some evidence to suggest that child pornography is not produced on a commercial scale in the Netherlands, but this does not negate the possibility of individual production which may ultimately be commercialized. Nor does it imply that prohibition of importation from other countries is totally effective. There is also a problem concerning the publications of "nudist camps" with children posing nude which are still found on the shelves of adult pornography shops. The liability of the customer who is in possession of the material in the Netherlands, Denmark and other Scandinavian countries remains equivocal.

186. Complaints have emerged concerning Germany as a source of child pornography. Although there is a law to protect children from pornography, there is also a ready market in such cities as Hanover and Frankfurt where in numerous "Liebhaber" child pornography, particularly on video, is available. Much of this also emanates from films made by amateurs which then reach the commercial market. Moreover, it seems that mere possession of pornography is not punishable.

187. Sources from France report a number of seizures of cassettes and photos of a pornographic nature. However, reforms in the law, particularly in 1990, have imposed stricter control over pornography in relation to cinemas and videos. The Criminal Code has bearing upon the subject, particularly under the coverage of offences against public morals and debauchery. There is also a police brigade that deals specifically with child-related problems, and a 24-hour hotline service is provided by the authorities to help children.

188. Laws covering child pornography, specifically and/or implicitly, are to be found in other European countries such as Czechoslovakia (crimes against public morality), Ireland (crimes against minors), Iceland (criminal offences) and Austria (crimes concerning immorality towards minors). However, much of the implementation revolves around the age of consent. If the child is over that age, even though he/she is under 18, prosecutions against offenders are not necessarily initiated by the authorities.

189. Sporadic cases of child pornography are also reported from Switzerland, Poland and, more recently, Liechtenstein.

190. In Asia, the legal situation is similar to that in other regions. There are laws dealing both directly and indirectly with the issue. For example, Japan's Penal Code which prohibits the distribution, sale and possession of obscene materials. The Penal Code of the Philippines covers offences against

morality, but there is no specific provision on child pornography. While the volume of child pornography circulating in this region may be smaller than in the West, there is an evident transnational connection in that Asian children have been used by Western and other pornographers, and materials showing these children have been circulated worldwide.

191. Instances of child pornography in Africa seem rarer, and there is little information on the subject. The situation is similar in Central/South America. Some of the legislative innovations providing protection for children in this field include the Brazilian Statute of the Child and Adolescent. Other countries in the region have criminal codes and youth codes covering child pornography. However, the sitution in countries such as Chile and Uruguay suggests that possession of child pornography is not an offence.

192. Some of the concerns evident from the information gathered during 1990-1991 included the following:

(a) The circulation of child pornography is most widespread in developed countries, particularly in the West. However, traffic in children from developing countries used for pornographic materials persists and needs stronger countermeasures. Much of this is linked with sex tourism and prostitution in developing countries. The increasing transnationalization of the problem indicates a global phenomenon where supply and demand are interwoven across boundaries and continents;

(b) Although laws touching on the subject in general, either directly or indirectly, do exist, the question of enforcement is again an issue. Sometimes, enforcement is poor with a situation paralleling the context of prostitution, e.g. corruption and lack of adequate personnel. Where there is a federal State, the test of implementation will be at the individual State level. The role of municipalities and municipal regulations is important at the local level in all countries. There are also loopholes concerning those who are in possession of pornographic material as distinguished from those who manufacture and distribute it. This observation from the 1988 report of the Attorney General of the United States is worth noting: "The prohibition of the mere possession of child pornography is a necessary incident to drying up the market". 90/ Equally problematic is the question of the age of consent which is often lower than the international criterion for defining the child. This may mean passivity on the part of law enforcement personnel when the pornography concerns those who are under 18 but who are above the age of consent;

(c) The test of whether something is pornographic revolves around notions such as obscenity and indecency. There is now a shift away from these notions. One recommendation is to simplify matters by opting for the following categorization:

> "- Portrayal of children in sexual relations with an adult or another child or being the viewer of such act.

- Portrayal of nude children or children with uncovered genitalia, in sexual positions or poses that would suggest intercourse or other sexually related activities.

- Inclusion of children in adult pornographic publications whether their pictures be sexually explicit or not."; 91/

(d) There is a grey area concerning certain publications which provide addresses of sexual services, particularly for paedophiles, with the consequent incitement to child prostitution or child pornography. These publications are produced and distributed widely. There is a thin line between the freedom of expression which some would use to justify such publications and the criminality of child pornography and child prostitution;

(e) Laws and policies do not sufficiently address new technology such as computers, telephones, videos, etc. which may be the instruments of crime. In future, it will be very simple to convey pornography, via computers, across frontiers, for example. The traditional approach of using customs officials to open parcels and police raids on shops will no longer be sufficient. This would suggest the need to mobilize customer consciousness and community awareness to prevent the problem from arising in the first place;

(f) Inadequate sex education in many countries may lead to a misunderstanding concerning the problem of child pornography and lack of empathy for the victims themselves. Here again, one sees the importance of education in a pluridisciplinary perspective;

(g) While criminal sanctions are one way of dealing with offenders, not enough attention has been paid to the psychological side and the use of psychiatric treatment if it is available. If the offender has medical problems, criminal sanctions will not necessarily lead to changed behaviour. Data is lacking on this question, which suggests the need to delve more deeply into possible psycho-medical remedies which may be required as a complement to legal remedies, and to improve data gathering and monitoring in all countries.

International scenario

193. International law on the subject dates back to the early part of this century.

194. The International Convention on the Suppression of the Circulation and the Traffic in Obscene Publications was adopted in 1923 and amended in 1947. Basically, it requires States parties to "take all measures to discover, prosecute and punish" those who produce, distribute or exhibit any obscene material. The Convention suffers from many of the problems affecting other conventions, such as poor implementation at the local level. It also fails to address specifically the issue of child pornography, and it is unclear on the position of the person who possesses child pornography.

195. Further inspiration for action came with the 1959 United Nations Declaration on the Rights of the Child adopted by the General Assembly in its resolution 1386 (XIV) of 20 November 1959, whose principle 2 provides that:

> "The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy manner and in conditions of freedom and dignity ..."

and principle 9 whereby:

> "The child shall be protected against all forms of neglect, cruelty and exploitation.... He shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development."

196. More recently, the Convention on the Rights of the Child advocates a pluridisciplinary approach to tackle the issue. By article 19 (1) signatories are required to

> "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".

More specifically, article 34 calls for all appropriate national, bilateral and multilateral measures to prevent: "(c) the exploitative use of children in pornographic performances and materials".

197. The "soft law" approach referred to in the earlier section on child prostitution, can be re-emphasized here. In particular, the draft programme of action for the prevention of the sale of children, child prostitution and child pornography, with its accent on information and education, social measures and development assistance, legal measures and law enforcement, rehabilitation and reintegration, and international coordination, can be recalled. 92/ It advocates more attention from the law enforcement authorities with regard to this problem, and urges States to make not only production and distribution of child pornography but also its possession a crime. Postal and customs services are encouraged to detect and prevent the transmission of material containing child pornography, while new technology used for the production and distribution of child pornography should be countered more effectively.

198. These proposals are to be recommended. More preventive strategies to deal with the root causes at the family level may also be advanced. This may be complemented by more customer consciousness and community awareness, and by the provision of medical facilities in conjunction with legal remedies with respect to the abuser and the abused.

199. The question may be explored more forcefully at the bilateral and regional levels. Exchange of information on paedophiles and criminal networks may help to track transfrontier cases of pornography more effectively. This should be coupled with more incentives for law enforcement personnel and use

of special police squads, with more women members than are found now. This should be complemented by active participation from social workers, others involved in child protection and the children themselves so as to make the operations more comprehensive and child-oriented.

IV. COUNTRY STUDY: THE NETHERLANDS

Introduction

200. This section of the report presents the findings of a visit paid by the Special Rapporteur to the Netherlands from 10 to 15 June 1991, at the invitation of the Government. It aims to be concise and is limited to the impressions gathered by the Special Rapporteur during his visit, complemented by other information available before the end of 1991.

201. The Special Rapporteur wishes to thank the Government of the Netherlands for the open and frank dialogue that took place during the visit, and for the efficient manner in which it followed up requests for further information. It is hoped that the recommendations at the end of this report will be useful for further action at the national and other levels.

202. The visit was aimed at appraising the situation of the sale of children, child prostitution and child pornography in the Netherlands. A "child" is defined as a person under 18 years of age, in accordance with the Convention on the Rights of the Child. Of particular concern under the heading "sale of children" are three constituents: sale by means of adoption for commercial purposes, aspects of child labour exploitation and organ transplantation. These concerns were expressed by the Special Rapporteur to the Commission on Human Rights in his preliminary report submitted at the beginning of 1991; they were identified as international phenomena. The purpose of the visit to the Netherlands was thus to assess the country profile of a developed country, its challenges and prospects. This should prove a key case study for the types of action which may be required not only in the Netherlands but also in other parts of the world.

203. During the week-long visit, the Special Rapporteur had free access to a wide variety of organizations and persons involved with the issue. Meetings were organized not only with the governmental sector, but also with the non-governmental sector and the children themselves, including child prostitutes. Visits were paid to field workers, local police, various red-light districts and shops selling related materials. Round table discussions were held with a range of persons who could provide first-hand information, including the police, municipal authorities, civil servants, groups working at the field level and the individual concerned, both male and female, Dutch and non-Dutch. Field visits were carried out mainly in The Hague, Amsterdam and Utrecht. While some of the visits were arranged (via official channels), other visits of an impromptu and informal kind were also undertaken.

204. At this juncture, some of the constraints facing the Special Rapporteur may be identitied as follows:

(a) The shortness of the visit inevitably meant that the information gathering was done on a limited basis, despite the kind help rendered by the Government and the non-governmental sector;

(b) As will be shown below, more information was available on some areas than on others, e.g. more written literature in English was found on the question of prostitution and less was found on the question of adoption.

(c) Much of the literature available at the time of writing was in the Dutch language, and there was no means of translating or digesting a great part of it in time to be analysed in this report, which is based mainly on English documents, oral responses from individuals and circumstantial evidence from the field visits.

Situation

205. The standing of the Netherlands is generally high in international circles concerned with human rights. This is exemplified by the UNDP Human Development Report, 1991 which accords to the Netherlands a high ranking in regard to its human freedoms index. 93/ However, it should be noted that the problem dealt with by the Special Rapporteur in this report is often invisible or only marginally visible, and there is a grey area which needs to be made more transparent.

206. The national scenario is encapsulated in a recent official publication of the Social and Cultural Planning Office, The Social and Cultural Report 1990, as follows:

> "The Dutch population enters the 1990's in comparatively favourable social and cultural circumstances. This is evident both from the objective data and from the way these are subjectively perceived". 94/

207. There is

> "fairly even distribution of income. A high percentage of gross national product is redistributed by means of public expenditure. With a public spending ratio of around 60 per cent, Sweden and the Netherlands head the field in Europe. In particular, this is due to the high level of expenditure on social security, for which reason it would not be incorrect to regard the Netherlands in terms of the distribution of prosperity as a comparatively egalitarian society". 95/

208. Governmental action on the development and protection of children and youth ranges from a wide array of laws which will be referred to below, to a national youth policy, coupled with a multi-year programme. This includes promotion of educational and employment opportunities.

209. As recognized by The Social and Cultural Report 1990, there remain many problems facing families and their children today. Financial insecurity, unemployment and other pressures may lead to dislocation of the family system, with implications for child abuse and exploitation. As families become more fragmented, children and youth are often left to fend for themselves and may be enticed into abusive or exploitative situations. Moreover, there is a group which is at times left on the periphery of socio-economic development, namely immigrants/migrant workers and their children. As that report also notes, "The educational results of some major groups - Moroccans and Turks - are poorer than could be expected on socio-economic grounds alone". 96/ In addressing the issue of child abuse and exploitation, one should thus bear in mind the different ethnic groups which may be involved with the issue.

A. Sale of children

210. From the evidence ascertained during the visit, there is a need to be vigilant, especially as sporadic cases of concern do emerge, and the increasing transnationalization of relations may lead to the advent of new channels for the sale of children. Particular attention should also be accorded to the issue of immigrants/migrant workers and different ethnic groups who are at times marginalized in the development process.

1. Adoptions

211. In the case of adoptions, particularly inter-country adoptions, a non-governmental source estimates that in the 1970s there were some illegal inter-country adoptions (with figures numbering 100 or more) from South America and Asia. About 1,000 children of foreign origin are adopted by Dutch nationals each year. However, the Government has taken steps to prevent the commercialization of inter-country adoptions. There is now a mechanism under the Ministry of Justice, acting in cooperation with the Ministry of Welfare, by which potential parents are encouraged to apply for adoptions through licensed organizations only. The process is scrutinized by ministry officials to check that there are no abnormal financial dealings (there is a prohibition against unreasonably high fees charged by intermediaries).

212. The former laws on the subject - the Civil Code, the Foster Children Act 1951 and the Child Care and Protection Act 1961 - have been reformed. The 1988 Rules concerning the Placement in the Netherlands of Foreign Chidren with a view to adoption stipulate that potential foster parents must obtain permission from the Ministry of Justice. They must also be reviewed by the Child Welfare Board to see if they are suitable. Records are kept of the entire process.

213. Do illegal adoptions take place outside official channels? The possibility of circumventing the law is ever-present, but both the governmental and non-governmental organizations which met the Special Rapporteur during his visit suggested that this was unlikely or on a limited scale. One government official stated that, in recent years, there were no reports of children having been adopted illegally.

214. However, there is a need for constant vigilance, which should not be seen as being incumbent solely upon the recipient country. Action is also required in the source country to ensure that there is a central authority through which inter-country adoptions would be channelled; this authority would liaise with the central authority in the receiving country. There is also an ongoing debate as to whether inter-country adoptions should be permitted only via those agencies which are licensed by the central authority. Some countries still prefer not to compel such agencies to register with the relevant authority, if it exists. In the Netherlands, however, the trend favours licensing and registration of these intermediaries through the Ministry of Justice as the central authority.

215. Legal measures were reinforced in 1990 with the passage of a new law to implement the 1980 European Convention on Recognition and Enforcement of Decisions concerning Custody of Childern and on Restoration of Custody of Children, and the 1980 Convention on the Civil Aspects of International Child Abduction. Basically, the law provides for a central authority to deal with the custody, care and return of abducted children. The group of children covered are those "under 16". This should accord additional protection to children, although the age threshold diverges from that of the Convention on the Rights of the Child ("under 18").

2. Child Labour

216. Both governmental and non-governmental sources indicate that the problem is under control in the industrial sector as far as the Dutch population is concerned. This is partly due to an extensive array of protective labour laws and the access of inspectors to factories to ensure law enforcement. The relevant laws include the 1919 Factories Act and the 1980 Working Environment Act. Basically, employment for those under 15 is prohibited, in keeping with International Labour Organisation Convention No. 138. Special regulations determine the conditions of work for those between 15 and 18. Compulsory schooling until the age of 16 is also a means of keeping children out of the labour market. In addition, the Government's youth policy aims to create more training and job opportunities for youth, in view of the unemployment facing many of them when they try to enter the labour market after schooling. 97/

217. There are two shortcomings. First, some exploitation of child labour in the agricultural and service sectors remains. This overlaps with child prostitution, which is an integral part of the service sector. Second, sources indicate a rising concern over the use of child labour among certain immigrant groups in small-scale operations to manufacture goods such as textiles. In migrant worker communities, there is the additional issue of girls being obliged to work at home rather than attend school.

218. The problem concerning immigrant and migrant worker communities should be understood in their cultural setting and the process of adaptation to a new lifestyle in the Netherlands. On the one hand, there may be traditional practices among certain ethnic groups which place children at a disadvantage, and these need to be questioned. On the other hand, the existence of labour laws and compulsory education may be seen by some as not necessarily responding to the needs of these communities, the members of which may feel

alienated from the laws and the system itself unless their needs and participation are sufficiently reflected in that framework. The search for a compromise depends upon more education and dialogue and the allocation of more facilities to foster the participation of immigrant communities.

3. Organ transplantation

219. Both the governmental and non-governmental sources interviewed during the Special Rapporteur's visit indicated that the practice of using children's organs for commercial purposes is virtually unknown in the Netherlands. However, laws and policies are needed which will prevent the possibility of abuses in this field. Of note is the need to prevent the commercialization of organ transplantion, which may ultimately have implications for children. In this respect, the pronouncements of the World Health Organization, particularly the 1990 Guiding Principles on Human Organ Transplantation, are most relevant. These include the principles that "no organ should be removed from the body of a living minor for the purpose of transplantation. Exceptions may be made under national law in the case of regenerative tissues"; and "it should be prohibited for any person or facility involved in organ transplantation procedures to receive any payment that exceeds a justifiable fee for the services rendered".

B. Child prostitution

220. One estimate suggests that there are some 15,000 prostitutes in the Netherlands, and a small percentage (about 7 per cent, according to one source) are children. 98/ Some are part-time and some are full-time. One source indicates that the young ones are more likely to be in closed institutions rather than on the streets, for fear of being apprehended by the police; some may be there against their will. It is also evident that some are runaways from home who resort to prostitution as a means of survival. Child abuse at home may push children onto the streets and ultimately into such prostitution. Sometimes there is a link between prostitution and drug addiction and other criminal behaviour.

221. The above scenario is subject to three qualifications. First, there is evidence of a transnational flow and trafficking of migrant prostitutes, from South America, Africa and Asia, including women, men and transvestites. Some enter illegally, and sometimes false documentation or sham marriages facilitate admission into the Netherlands. This indicates a degree of involvement by organized crime, although the extent of the networking varies. Children may also be "hidden" among this group of illegal migrant prostitutes.

222. Second, there is an emerging problem concerning the children of local immigrant communities who resort to prostitution, perhaps as a consequence of the breakdown of traditional family patterns in those ethnic groups seeking to adapt to Dutch society. This may also be linked to the high dropout rate from school and subsequent unemployment.

223. Third, there is a grey area concerning whether to classify young persons between 16 and 18 years of age as "child prostitutes". This has repercussions not only for the definitional context but also for law enforcement, as discussed below.

224. In law, particularly under the umbrella of the Dutch Criminal Code, there is a distinction made between child prostitution (involving those under 18), which is illegal, and adult prostitution, which is not illegal. although exploiters of prostitution, namely procurers and brothel owners, are outlawed. This reflects the "abolitionist" approach which seeks to punish the exploiters rather than the prostitutes themselves.

225. In practice, the position concerning adult prostitution is somewhat different. Much depends upon the municipality itself in supervising implementation of the law, and this has resulted in a great deal of flexibility at the local level. In this context, the police themselves may at times find it expedient to turn a blind eye. This is also influenced by the view that if the law is applied too stringently, the prostitution trade will go underground.

226. Thus, there is a diversity of approach at the municipal level. In some cities streetwalking is illegal whereas in other cities it is not; the restrictions on prostitution depend on whether an activity constitutes a "public nuisance". The municipal attitude towards procurers and brothel owners is also more relaxed in practice, with some municipalities tolerating the operations of these intermediaries if they keep to certain "zones" of the city. At the time of the Special Rapporteur's visit in 1991, there was a move to amend the Criminal Code so as to abrogate the ban on intermediaries and to introduce formal licensing or registration of brothels and brothel owners. The rationale for this was that it would lead to better access by the authorities, including public health personnel, to supervise brothels. The trend was thus towards a more "regulatory" approach in regard to the intermediaries.

227. This report does not pass judgement on the various approaches in regard to adult prostitution and their intermediaries. It does, however, take a clear-cut position on the issue of the prostitution of those under 18 years of age and those exploiting them; prostitution of those under 18 should not be permitted as it may impede their development, and their exploiters should be outlawed.

228. The situation is somewhat complicated in Dutch law, as the age of consent for sexual relations is 16. The police are, therefore, reluctant to take action in regard to the grey area of those between 16 and 18 years of age, even though by law they should not indulge in prostitution. In effect, this may lead to the exculpation of the intermediaries who profit from the prostitution of those under 18.

229. Various provisions of the Criminal Code already offer a degree of protection in theory, but it is the implementation process which calls for more effective law enforcement. Sections 234 (intercourse with a defenceless person), 244 (intercourse with girls under 12 years old), 245 (intercourse with minors between 12 and 16 years of age), 246 (indecent assault), 247 (indecent assault on those under 18 years of age), 248 ter (inducement of a minor for the purpose of an indecent act by a promise of money or property), 250 (encouragement of a minor to commit an indecent assault), 250 bis (living on the earnings derived from the fornication of third parties), and 250 ter

(traffic in women and minors of the male sex) all criminalize the perpetrators of these acts. At the time of the Special Rapporteur's visit, there was a proposal to amend these provisions to increase the penalties to be imposed thereunder. The question is how to ensure greater protection of children through more effective law enforcement.

230. Another problem is that the women and girls lured into prostitution tend to be afraid of approaching the police for help. This is especially the case with illegal migrant prostitutes who enter the Netherlands without a work permit. They may be hesitant to approach male policemen for fear of being discovered as "illegals" working without a permit. They are also afraid of a gender gap, of not being taken seriously, or of a language barrier in the case of those prostitutes who do not speak Dutch. There is currently a predominance of men in the police force; only some 6 per cent of police are women. This indicates a need for more policewomen and others trained to empathize with the psychology of prostitutes as well as their different ethnic origins.

231. Outreach programmes are also important. Sometimes it is not sufficient to wait for the prostitutes themselves to come for help; help must be made more accessible to them. In the medical field, this is particularly important due to the threat of AIDS and the unavailability of medical check-ups in some areas. In addition, there is a need for more temporary shelters and counselling services, including hotlines.

232. Some non-governmental organizations, such as the Red Thread in Amsterdam (an organization run by ex-prostitutes for prostitutes), have taken this initiative with an outreach programme for prostitutes of both sexes and a hotline to receive complaints. Another outreach programme visited by the Special Rappporteur was run by a social worker for illegal migrant prostitutes from South America. Interestingly, the coordinator of the programme stated that while she had some help from lawyers in the form of advice and legal representation when necessary, she did not have sufficient back-up from the medical sector; more medical support from the authorities, including medical check-up facilities, would be welcomed.

233. The process of rehabilitation of child prostitutes is also a sensitive area. In international circles, there is currently a move away from "institutionalization" in the form of governmental facilities and remand/reform homes for child prostitutes, and a preference for more community-based involvement and facilities, e.g. outreach programmes run by ex-prostitutes or community organizations. This may be explored further in future. Particular attention should also be paid to involving members of the different ethnic groups to respond to a call for help or rehabilitation from prostitutes of those ethnic origins. This will create a greater degree of confidence among the prostitutes themselves, as there will be a cultural safety valve to help them. Reception centres and temporary homes run by these groups have great potential for the future, and need more budgetary allocations from the public sector.

234. Ultimately, there is the issue of "prevention" before it is too late. On the one hand, this entails more intensive scrutiny of the networks that exploit women and children and that are involved with national and

international trafficking in women and children. This has implications for more effective action by the police in both the source countries and recipient countries, in cooperation with Interpol. The Dutch Government has begun to send personnel to its embassies in various countries of origin to monitor the potential abuses and trafficking.

235. On the other hand, the root causes of displacement need to be addressed more seriously. In the case of transnational prostitution, it is the rampant poverty in the country of origin which often drives the prostitutes to search for a livelihood in other countries. Development aid and assistance offered by the Netherlands to the country of origin should be geared more to attenuating these root causes. The means include support for income generation, education and other human development activities leading to a better quality of life.

236. In the case of prostitution originating in the Netherlands, economic factors, including unemployment, also push people into the trade. This is compounded by socio-cultural factors, such as the decline of the family system, difficulties in adapting to a new culture (in the case of the children of migrant workers in the Netherlands), and child abuse within families which may compel children to run away and become easy prey for prostitution. Social help and subsidies for families, appropriate schooling, job opportunities and job creation, and community facilities may help to prevent the decline of the family, and improve the livelihood of different ethnic groups whose children may fall into difficulties.

237. On another front, the role of the customer has hardly been addressed. While customers are generally not considered to be committing a crime by visiting adult prostitutes, if they resort to child prostitutes they would be covered by the general provisions of the Criminal Code concerning intercourse with minors and indecent assault. However, this is qualified by the provisions that allow consent as a mitigating factor for children between 12 and 16 years of age.

238. There remains a major challenge concerning not only law enforcement against customers but also how to raise customer consciousness and motivate them not to use the services of child prostitutes. As in many communities, the role of customer/consumer responsibility and related education is still weak and requires further consideration. The mass media have a key role to play in raising the level of consciousness in this regard, and may be used accordingly in the future.

C. Child pornography

239. In general, the production and distribution of adult pornography is not illegal in the Netherlands. However, it is illegal where it concerns children. The law has become more stringent due to the catalytic incident discussed below.

240. In 1984, United States customs reported the confiscation of some 2,000 batches of child pornography, 70 per cent of which was claimed to have been dispatched from the Netherlands. A government inquiry was initiated in the Netherlands which undertook to examine the origins of the materials concerned.

241. In 1987 the report of that government inquiry was published. It stated the following, inter alia: 99/

- With regard to the production process, while recognizing that child pornography, such as the photographing or filming of victims, is an international phenomenon which also occurs in the Netherlands, there is no evidence of commercial production of child pornography. In the words of the inquiry: "The group encountered no evidence whatever in the period under review of commercial production in the sense of the indecent photographing or filming of children with a view to commercial distribution". 100/

- With regard to the distribution process, there is evidence to suggest that pornographic materials have been dispatched from the Netherlands to such countries as the United States, but not in an organized manner. In the words of the inquiry: "Large numbers of different, untraceable addresses used for the consignment of this material suggests to the Working Group that there is no such thing as organized distribution; more commonly it amounts to consignments by friends or acquaintances or by the addressee himself who after visiting the Netherlands, prefers material bought there to be sent back anonymously rather than taking it in his own luggage". 101/ Moreover, other links are identified by the inquiry as follows: "The Netherlands have played a comparatively large part in the consignment of child pornography to the United States and Germany. In the latter case, however, the consignments have, when detected, been made by German nationals." 102/

242. Due to that catalytic incident, the Dutch authorities have adopted a much stricter approach to child pornography. A new law was introduced in 1985 to impose heavier penalties on those indulging in child pornography. Section 240 (b) of the Criminal Code was amended to punish more severely distributors of pornographic materials using the services of those below 16 years of age. Moreover, section 240 (a) of the Code provides protection for minors under 16 years of age against the sale of harmful pornography. The various provisions concerning sexual abuse may also be invoked in conjunction with the sections on pornography. Interestingly, the age threshold is different from that of the Convention on the Rights of the Child which uses 18 as the criterion.

243. The findings of the inquiry are subject to the following considerations. First, they do not deny that non-commercial production of child pornography may exist in the Netherlands. As there is sometimes a flow of non-commerical pornography (used for private purposes, mainly by individuals or small circles) into the commercial stream, there is a need for consistent vigilence.

244. Second, although the shops selling pornography abide by the general rule not to sell child pornography, some publications of "nudist" camps are sold on the shelves of these shops, and these often contain pictures of children.

245. Third, as in the case of child prostitution, the gap between 16 and 18 year olds is a grey area in which, in practice, the child is unprotected.

246. Fourth, it seems that while the law covers the producer and distributor in terms of criminality, the law does not cover the customer/consumer of pornographic materials.

247. Fifth, while the law prohibits pictorial representation, it is too slow in responding to the advent of technology and the imaginative use of new channels of pornography, e.g. "telephone sex" and other audio forms.

248. Sixth, there is an equivocal area concerning paedophile publications, printed and/or distributed in and from the Netherlands, giving addresses of services offered by young persons in various countries. So far this type of publication has escaped the net of the law, and falls under the sensitive rubric of freedom of speech, even though it may ultimately lead to child exploitation.

249. Seventh, while the district police keep an eye on the prostitution trade, it is the municipal police which oversees the issue of pornography. In practice, this may lead to different strategies adopted by the two sectors of the police where an activity involves both child pornography and prostitution.

250. The visit of the Special Rapporteur revealed little evidence of child pornography on the shelves of shops selling pornography. However, a non-governmental source voiced the concern that the police should adopt a more systematic approach by making more in-depth investigations and following up all the links. These should also be revealed to the public in due course.

D. Recommendations

251. Although the number of abusive and exploitative incidents concerning the sale of children, child prostitution and child pornography is small in comparison with those in other countries, the need for vigilance is as relevant to the Netherlands as it is to all other countries. The following recommendations are made with a view to according children more effective protection from abuse and exploitation.

1. Sale of children

252. In relation to inter-country adoptions, more bilateral and other arrangements should be explored with the countries of origin to ensure that the proper modalities are respected, and that there is a central authority in each country to scrutinize the process before the child departs. Particular attention should be paid to the role of intermediaries and the need to prevent them from engaging in improper conduct.

253. In regard to exploitation of child labour, the needs of minority groups should be responded to more effectively. This includes more relevant schooling and education, job opportunities, social subsidies and strategies to ensure that the children of these groups have access to the necessities of life and that their labour is not exploited. There is a need for more education and dialogue with the parents, community organizations and leaders drawn from the various ethnic groups to prevent child labour exploitation by reference to national and international standards.

254. In regard to organ transplantation, laws and policies should be oriented to preventing the threat to children and the potential exploitation for commercial purposes.

255. In the case of child abduction, tracing facilities need to be maximized and liaison channels established between the country of origin and the Netherlands. A system parallel to that for inter-country adoptions might be considered.

256. Professionals working in this field need clearer guidlines on what to do if a sale is suspected and where to refer cases. This also applies to child prostitution and pornography, discussed below.

2. Child prostitution

257. More preventive programmes and budgetary allocations should address the problems of families and their children. This includes employment opportunities and social subsidies to prevent the decline of the family and dislocation from rural to urban areas.

258. More attention should be paid to the problems of the children of immigrants/migrant workers, and to their employment needs as well as their difficulties in adjusting socially. A more broadly based dialogue should be established with the parents and community representatives to prevent the root causes which drive children out of the community and into prostitution.

259. More facilities should be provided to help prostitutes who enter the country illegally. This includes more outreach programmes and services, run by field workers drawn from their respective ethnic groups. These facilities should encompass legal aid and assistance, medical services and shelters.

260. The law enforcement authorities need to track more effectively the trafficking in women and children from the countries of origin to the Netherlands. On the one hand, placement of Dutch representatives in the countries of origin as a monitoring mechanism already exists and should be maximized. On the other hand, consistent in-depth investigations need to be pursued to identify the underworld elements involved in the trade.

261. There should be a section of the police to deal specifically with the issue of child abuse and exploitation. This could take the form of a childrens' protection force or centre. More women should be recruited into the police force for this purpose, and there should be continual dialogue with the non-governmental sector dealing with children. All of them should be trained to respond to not only the needs of children but also the different ethnic backgrounds.

262. A fund should be established at the national and/or international levels to help victims of exploitation to litigate against the perpetrators and to assist the process of rehabilitation.

263. As part of the shift away from institutionalization, community-based assistance for victims of exploitation needs to be maximized. This can be initiated by the prostitutes or ex-prostitutes themselves reaching out to help their peers, and may entail shelters and hotlines. Ex-prostitutes may also act as role models for changes of occupation.

264. The grey area of children between 16 and 18 years of age needs to be examined more closely at the national level, as law enforcement to protect children in this group is lax. One should be mindful of the age threshold set by the Convention on the Rights of the Child (18) to which the Netherlands is a party.

265. Where prostitutes are lured from their country of origin to the Netherlands by Dutch nationals, even though these prostitutes enter the Netherlands illegally, they should be allowed to stay in the country to prosecute those who are involved in the trafficking.

266. While more effective law enforcement is required against the intermediaries of child prostitution, additional thought should be given to the aspect of customer/consumer responsibility in that context. Consumer education on the issue may be required as part of the process of spreading the message of children's rights. A similar approach is required in the context of child pornography.

267. As much power is devolved to municipalities to enforce the law, they should be called upon to take more steps to ensure that while prostitution itself is permitted, child prostitution should be prohibited. The strategies at this level need to be comprehensive, bearing in mind prevention of the root causes, access to schooling, provision of alternative occupations, protection by means of better law enforcement, and rehabilitation through counselling and changes of livelihood.

268. Where child prostitution is linked with drug addiction and other criminal activities, the strategies geared to eradicating child prostitution should be placed respectively in the setting of how to lessen dependence upon drugs and how to prevent involvement in criminal activities. This is linked with the State's approach towards drugs consumption and the involvement of criminal elements.

3. Child pornography

269. More attention should be paid to not only the commercialization of child pornography but also individual instances which may lead into the mainstream of commercialization. A punitive approach against the perpetrators will not necessarily suffice where there are psychological reasons which lead to the abuse of children through pornography. In this case, medical and counselling facilities for those exploiting child pornography may also be required.

270. The grey area of children between 16 and 18 years of age should also be tackled in national policy-making, especially as the Convention on the Rights of the Child addresses the issue of children up to 18 years of age.

271. Law and policy should be adapted to cover new forms of pornography such as "audio-pornography".

4. Miscellaneous

272. The process of prosecutions through the courts system should be expedited. This should be coupled with more extensive legal aid and assistance for those in need.

273. More budgetary allocations should be provided to support preventive strategies and the law enforcement process, with incentives given to exemplary police personnel for their work.

274. Dutch foreign policy and aid already take into account human rights concerns. In this context, the issue of the sale of children, child prostitution and child pornography may be raised more concretely vis à vis countries of origin, especially where there is transnational trafficking which may lead to a flow of children into the Netherlands.

275. There should be more extensive monitoring and reporting of these issues, as well as consistent data collection. The Social and Cultural Survey of the Netherlands could be broadened to cover these issues annually. Concomitantly, they should be raised as matters of concern to the public, where there is dissemination of children's rights at the national and local levels. This may help to alert children to the dangers which may lurk in society.

V. GENERAL OBSERVATIONS AND RECOMMMENDATIONS

A. General observations

276. This report has endeavoured to examine three main areas of concern: i.e. the sale of children, child prostitution, and child pornography. The first heading is subdivided into four areas of study, i.e. sale concerning adoptions, sale due to child labour exploitation, sale in regard to human organ transplantation, and other forms of sale.

277. The general impression gained is that while there are national and international laws which encompass most of these situations, law enforcement leaves much to be desired. Moreover, the laws that do exist tend to be curative rather than preventive. Much more should be done to protect children, and curb both the demand and supply of children for these exploitative purposes. More emphasis needs to be placed on preventive strategies to tackle the root causes, and these have to be operationalized by international and national plans and programmes of action, with concomitant budgets and targets within specific time-frames. The setting should be multidisciplinary and interdisciplinary with consistent monitoring, evaluation and follow-up in all fields.

278. The catalysts in the process are multifarious: governmental and non-governmental, community and individual, parent and child. At the international level, the issue should not be relegated simply to those agencies that see themselves as dealing with human rights and children's rights. Rather, it is a matter for all agencies, and this perspective should be incorporated into their work. Of no less importance is the role of

international aid agencies, such as UNDP and bilateral agencies, and financial institutions, such as the World Bank and IMF, which have much to do with the debt burden of many developing countries and the financial aid which may be utilized to help restructure the development framework.

279. On another front, the role of Interpol and other law enforcement personnel, including the judiciary and immigration officials, is essential for addressing the trans-frontier implications of child exploitation; their cooperation across boundaries needs to be maximized precisely because traffic in children is transnational and often only marginally visible.

280. At the national level, one is struck by the need to broaden the range of catalysts which can help to protect children. Governments can never tackle these problems alone, precisely because these are community problems requiring community vigilance and participation. While one should call for more effective performance by government agencies, the role of the non-governmental organizations and of the community sector are equally important. Their efforts should be harnessed as part of the social mobilization to tackle the root causes of child exploitation and provide the necessary remedies, while facilitating the rehabilitation process for the victims. Parents' organizations, religious groups, community development organizations, children's groups, medical and lawyers' associations and the mass media are some of the non-governmental entities which can help. Their initiatives also need government recognition, and incentives for their contribution to social development should be promoted in such areas as tax exemptions and other privileges to facilitate their work.

281. One is also struck by the lack of participation from the service industry, the business sector and the customers/consumers in preventing these problems from arising. This negligence is due in part to the fact that child exploitation is part of a "business", and there are those in the business sector who would prefer to turn a blind eye to the problem. While "sticks" may be needed to apprehend culprits, the "carrots" which can encourage a change in behaviour are also worth exploring. Industries should be called upon to exert peer group pressure upon those members of the sector who would otherwise abuse the process, and they should be given incentives to exert such pressure. Protection of children should be an integral part of the industrial and business privileges that are generally accorded to industries. Indeed, the development of the business sector should be linked with the need to encourage industries to change their ways and to incorporate "human development" as a basic stricture.

282. Likewise, the customer/consumer. Consciousness of these problems should be raised among consumers so as to inculcate an ethic and a habit where exploitation of children would be shunned. Consumer responsibility towards children should be advocated more strongly, and it is the consumer sector that should be called upon to pressure its members to act responsibly.

283. It is because the menace of child exploitation lurks in the background of all societies, that it needs to be raised more openly, in the classroom and beyond. Yet there is a tendency to gloss over the problem or prevent it from

being raised in the educational process. If the community is to help prevent and cure the problem, children's awareness and participation from an early age are crucial.

284. Some of the underlying considerations conditioning action by all sectors of the community include the following:

(a) Prevention, in particular the need for preventive action against child exploitation in the form of satisfaction of basic needs, not only for the child but also for the family. Correlative development assistance and a redistribution process to redress social deprivations and malpractices;

(b) Protection, particularly the enactment and reform of laws and related policies to protect children's rights at both the national and international levels, in addition to better identification of the culprits and law enforcement;

(c) Remedies, particularly the improvement of access to legal and other remedies, bearing in mind that the formal legal institutions, such as judges, police and lawyers, need to be complemented by quasi-legal or non-formal personnel, such as village committees and ombudsmen, who can help to safeguard children's interests at the grassroots level;

(d) Rehabilitation, particularly the need for counselling and medical, occupational and developmental facilities to help rehabilitate the victims of exploitation and provide alternative forms of livelihood;

(e) Intervention, particularly the building of a corps of responsive institutions and personnel, both governmental and non-governmental, to intervene on behalf of the child and the family with concomitant budgetary allocations;

(f) Participation, particularly the recognition of more popular participation by the community in protecting children, and especially by the children themselves, through allowing them access to the legislative, administrative, educational and other processes in the implementation and evaluation of programmes;

(g) Dissemination/information, particularly the gathering and dissemination of data, the education and teaching of children's rights and the inculcation of child protection as a pervasive cultural ethic;

(h) Collaboration, particularly the maximal use of existing entities and resources at both the national and international levels to help protect children, collaborating not only with traditional human rights organs and child-targeted institutions but also others, such as financial and development agencies, consumers and the private sector, whose operations have implications for the child and the family;

(i) Alternatives, particularly the provision of choices based upon not only sanctions and disincentives against child exploitation but also social pressure and incentives for changes of behaviour and redirecting cultures to broaden an alliance to help children.

B. General recommendations

285. The present report is not intended to be exhaustive, and it should be considered as a starting point for sustained efforts on the part of the international community to investigate the issue of the sale of children, child prostitution and child pornography. Updated information should be collected consistently by all countries, and this should be made available to the United Nations Centre for Human Rights and relevant agencies and personnel for collation and analysis. Insufficiency of data should be overcome by the designation and/or establishment of national units to gather such information and to make it widely available. Networking between governmental and non-governmental institutions and personnel on these matters should be encouraged.

286. More responses to the questionnaire sent by the Special Rapporteur to a variety of countries and other entities in 1991 would be welcomed.

287. Field visits to countries are essential to enable the Special Rapporteur to gather first-hand information at the national and local levels, and to ensure that his analysis is derived from direct experience. This approach should be fostered in future, bearing in mind the need for a geographical balance for these visits.

288. Interventions by the Special Rapporteur on behalf of children in difficulties should be promoted, and States should expedite investigations and responses so as to facilitate the task of the Special Rapporteur in following the progress of each case.

289. States should accede to all the relevant human rights instruments and implement them accordingly. In particular, they should accede to the Convention on the Rights of the Child and should implement it in all areas of concern to this study. They should ensure correlative monitoring and evaluation of their implementation measures with the participation of the target groups themselves. The relationship between the sale of children, child prostitution and child pornography should be explored further in the context of the child as a migrant labourer and the connection with the protection accorded by the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families should be maximized.

290. The various initiatives proposed by the Working Group on Contemporary Forms of Slavery and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, such as the the draft programme of action for the prevention of the sale of children, child prostitution and child pornography, and the draft programme of action for the elimination of the exploitation of child labour, should be supported. Collaboration between States and other entities in the implementation of such initiatives should be enhanced.

291. Strategies to tackle the issue of the sale of children, child prostitution and child pornography should be multidisciplinary, interconnected and integrated. They call for coordination between development agencies, aid agencies, financial institutions, the private sector, governmental and

non-governmental organizations, communities and concerned individuals. Such strategies should be both preventive and curative, interlinking with relevant catalysts at all levels. They should be connected with responsive development planning at the international and national levels, responding to the basic needs and quality of life of children and their families. These include, inter alia, education, medical care and family planning facilities, occupational opportunities and social security.

292. The private sector and consumers should play a more active role in preventing child exploitation and in providing remedies where necessary. They should exert greater pressure on other members of the group to abide by the law. Consumer consciousness and consumer responsibility should be advanced as part of a business incentive and a consumer ethic respectful of children's rights.

293. Laws aimed at protecting children should be enforced more effectively. Law enforcement personnel should be provided with more incentives to improve their performance. Special units should be formed in the police forces and other law enforcement agencies, with more participation from women and the children themselves, in protecting children. In this context, the presence of social workers and others concerned with helping children is welcomed.

294. The community should be encouraged to participate more actively in the law enforcement process. This implies the emergence of "community watch" to monitor against abuses and exploitation of children. Where rehabilitation is necessary, community initiatives should be promoted to help children and their families. In this context, children should be placed in family and community settings rather than in State institutions.

295. A dialogue should be promoted between all relevant catalysts who interplay with the question of child exploitation with a view to preventing problems, protecting children and providing remedies where necessary. This includes the police, military personnel, immigration officials, municipalities, the mass media and members of the community who are involved with the welfare and development of children. Improved networking is required at all levels.

296. The private sector should adopt voluntary codes of conduct to establish their accountability in the area of children's rights and initiate a monitoring process to raise the consciousness of members of the sector. This is in addition to promotion of respect for the binding laws that already exist on child abuse and exploitation in each community.

297. More collaboration should be promoted between State agencies and local agencies, including municipalities which are vested with the power to protect children. In federal States, this implies more coordination between the different States to harmonize their laws to protect children, to exchange information, to apprehend culprits and to facilitate the return of children to their place of origin in keeping with the principle of the best interests of the child.

298. National police forces should work more closely with Interpol and immigration authorities to identify, trace and curb traffic in children and related activities. They should place the issue of child exploitation high on their list of priorities.

299. Each country should identify and/or establish a national focal point for the issue of the sale of children, child prostitution and child pornography. This would help to coordinate action on children's rights and provide referrals to other agencies where necessary. It would also help to mobilize the community to participate more actively in the process.

300. The issue of the sale of children, child prostitution and child pornography should be raised more openly in formal and non-formal education as a means of creating awareness. This should be coupled with appropriate sex education, family planning facilities and information about AIDS. The mass media should be encouraged to spread news and information responsibly, avoiding sensationalism while promoting access to the target groups.

C. Specific recommendations

1. Sale of children

301. Support should be given to the efforts to draft a new convention on inter-country adoptions and to provide safeguards against abuses in inter-country adoptions. This multilateral initiative can be complemented by regional and bilateral agreements.

302. More cooperation between the police and immigration authorities should be promoted to prevent abuses in inter-country adoptions. This may include screening of applicants for visas.

303. Facilities should be provided for counselling, matching of parents and children, and monitoring of these adoptions, with consistent follow-up.

304. Local adoption possibilities should be explored before inter-country adoptions are resorted to, and national laws and policies should provide safeguards against the operations of unscrupulous independent adoption agencies and intermediaries which may give rise to the sale of children.

305. Development aid and assistance should be given to the biological parents so as to enable them to retain their children instead of giving them away by reason of poverty.

306. There should be a registry and a central authority in each country to coordinate both local and inter-country adoptions. This authority would be responsible for registration of adoption agencies and ensure that improper practices do not arise.

307. In relation to child labour, an integrated and multidisciplinary approach is necessary to help child labourers and their families. This should include family subsidies, job opportunities and flexible school hours for children.

The whole range of activities proposed by the Working Group on Slavery's draft programme of action for the elimination of the exploitation of child labour should be implemented.

308. There should be stricter law enforcement in the case of child labour law, with more incentives for exemplary law enforcement personnel. All vestiges of bondage should be eradicated.

309. There should be greater protection of illegal migrant child labour. Child labourers in this situation should be deported to their country of origin only if basic human rights are guaranteed. This should be seen in the setting of relevant international standards on the rights of migrant labourers.

310. More attention should be focused on the plight of domestic labour, particularly in regard to children. Again, their basic human rights should be protected.

311. Greater vigilance is required in regard to cases of organ transplantation to prevent threats to children. This is not only contingent upon law and law enforcement but also medical ethics and the participation of the medical sector. The World Health Organization's Guiding Principles on Human Organ Transplantation should be supported and children should be protected from the commercialization process.

312. States should forbid the use of child soldiers. This depends upon a dialogue with the military. It also depends upon the various combatant groups who should be encouraged not to use child soldiers and to abide by the precepts of international humanitarian law.

313. A central registry for missing children should be set up in every country. This could be complemented by regional and other centres. Efforts to help trace these children depend upon closer cooperation between law enforcement and other agencies at both the national and international levels.

2. Child prostitution

314. An integrated and multidisciplinary approach is needed to tackle the prostitution problem. Reference should be made to the draft programme of action mentioned earlier.

315. Assistance is required for both families and children so as to lift them out of the poverty that drives children into prostitution or that pushes parents to sell their children.

316. The responsibility of customers should be advocated. On the one hand, this implies criminalizing customer behaviour. On the other hand, it means using incentives for changed behaviour through more education and consciousness raising, as well as peer-group pressure to promote children's rights.

317. Migrant child prostitutes should be protected from harm, whether or not they enter the country illegally. Help should be given to them to change

their lifestyle and their basic human rights should be guaranteed if they are sent back to their country of origin. This should be placed in the context of relevant international standards concerning the rights of migrant workers.

318. No discrimination or inhumane measures should arise against child prostitutes who are found to be HIV positive. Their rights should be respected and protected. Facilities such as hospices and shelters should be provided.

319. More attention should be paid to the transnational traffic in children which takes place between various parts of the world. Appropriate action should be taken to apprehend the culprits and return children safely to their home.

320. Sex tourism should be discouraged and the service sector, including tourist agencies, should act more responsibly on this issue in their dealings with their customers. A dialogue should be initiated between international and national tourist organizations to adopt a policy on children's rights and protection from exploitation.

321. Incentives should be given to non-governmental initiatives, including tax exemptions, in relation to programmes which help child prostitutes.

322. Exchange of paedophile lists between different countries should help to prevent the repetition of offences by the same persons, and should be encouraged.

323. Traditions which perpetuate child prostitution should be changed, not only through legislative enactments, but also through a broader educational base and through raising consciousness, in keeping with international norms.

324. The issue of child prostitution should be discussed more openly at all levels of the eductional system.

3. Child pornography

325. Laws should be reformed to take into account new technology which may be appearing with regard to child pornography.

326. Consumer responsibility should be promoted, as in the case of child prostitution. This should include the liability of those who possess pornographic materials. It would also cover the responsibility of the viewers of pornographic performances.

327. Medical as well as legal remedies should be applied to cases of child pornography. Counselling and rehabilitation facilities may be needed for both the abused and the abuser.

328. The police, customs officials and postal officials need to coordinate their efforts more closely to curb the circulation of pornographic materials. This entails both bilateral and other arrangements.

329. The multi-faceted strategies advocated by the draft programme of action referred to above should be supported.

330. States should appraise existing laws to see whether they cover child pornography, and promulgate relevant reforms. This is also related to the age of consent and the divergences between that threshold and the age criterion set by the Convention on the Rights of the Child.

331. Traffic in children for pornographic purposes should be investigated more closely and eliminated accordingly. There is a close relationship with the transcontinental movement of tourists and migrant workers: the supply and demand factors open up numerous avenues for child exploitation.

Notes

1/ For recent background reading, see: V. Muntarbhorn, Sale of Children, United Nations document A/CN.4/1991/51 (28 January 1991); Interpol International Criminal Police Review 428 (1991). See further: A. Bouhdhiba, Exploitation of Child Labour (New York: United Nations, 1982); J. Fernant Laurent, The Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, United Nations document E/1983/7 (17 March 1983).

2/ See further: A.G. Andersen, International Report on Child Pornography, Child Prostitution and Child Trade (Oslo: Norwegian Department of Justice, 1987); H.W.J. Buys, Report on the Sexual Exploitation of Children and Young Persons (Strasbourg: Council of Europe, 1989); O. Narvesen, The Sexual Exploitation of Children in Developing Countries (Oslo: Redd Barna, 1989).

3/ UNICEF, Children and Development in the 1990s (New York: UNICEF, 1990); UNICEF, The State of the World's Children 1991 (Oxford: Oxford University Press, 1991).

4/ United Nations, Report on the World Social Situation 1990 (New York: United Nations, 1989), p. ix.

5/ Statement of non-governmental organizations on the Programme of Action on the Sale of Children, Child Pornography and Child Prostitution, June 1991.

6/ Buys, op.cit., p. 6.

7/ For example, in South Asia the Devadasi practice of delivering girls to temples to become "goddesses". They subsequently fall into prostitution.

8/ Andersen, op.cit., p. 64.

9/ For a discussion of the linkage between crime and youth, see the various publications of the United Nations Congresses on the Prevention of Crime and the Treatment of Offenders, including Prevention of Delinquency, Juvenile Justice and the Protection of the Young: Policy Approaches and Directions (A/CONF.144/16) (2 July 1990).

10/ E/CN.4/Sub.2/AC.2/1989/8/Add.1, as cited in Muntarbhorn, op.cit., para. 9.

11/ E/CN.4/Sub.2/1987/28, ibid., para. 11.

12/ International Abolitionist Federation, Report to the Working Group on Contemporary Forms of Slavery (1989), p. 2.

13/ Report of the International Seminar on The Implementation of the Convention on the Rights of the Child with Special Reference to the Exploitation of Child Labour, Bonded Labour and Trafficking and the Sale of Children (Siracusa, DCI/ICJ, 1990), p. 8.

14/ As seen in the approach of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and its Working Group on Contemporary Forms of Slavery. Report of the Working Group on Contemporary Forms of Slavery on its sixteenth session (E/CN.4/Sub.2/1991/41).

15/ H. Van Loon, Report on Inter-country Adoption (The Hague: The Hague Conference on Private International Law, 1990), p. 20.

16/ B. Trillat and S. Nabinger, "Inter-country Adoption and Traffic in Children: Truth and Fiction", Interpol International Criminal Police Review 428 (1991), p. 18.

17/ Ibid., pp. 18-19.

18/ Report of the International Seminar on the Implementation of the Convention on the Rights of the Child with Special Reference to the Exploitation of Child Labour, Bonded Labour and Trafficking and Sale of Children, op.cit., p. 15.

19/ Time (4 November 1991) 40, pp. 41-42.

20/ Ibid. The article estimates that "more than 20,000 youngsters are taken out of their native countries in this way every year to begin new lives elsewhere. In the past 20 years, the United States has become home to an estimated 140,000 foreign adopted children, Sweden 32,000, Holland 18,000, Germany 15,000 and Denmark 11,000".

21/ Ibid.

22/ Defence for Children International (DCI), Preliminary Findings of a Joint Investigation on Independent Country Adoptions (Geneva: DCI, 1991).

23/ Ibid., p. 4.

24/ Ibid., p. 5.

25/ Ibid., p. 6.

26/ Ibid., p. 13.

27/ DCI, Protecting Children's Rights in International Adoptions (Geneva: DCI, 1989), p. 32.

28/ See: DCI, Romania: The Adoption of Romanian Children by Foreigners (Geneva: DCI, 1991).

29/ United Nations, Human Rights: A Compilation of International Instruments (New York: United Nations, 1988).

30/ Draft articles of a convention on international cooperation and protection of children in respect of inter-country adoption (The Hague: The Hague Conference on Private International Law, 1991).

31/ Ibid., article 11.

32/ Draft programme of action for the prevention of the sale of children, child prostitution and child pornography, in Report of the Working Group on Contemporary Forms of Slavery on its fourteenth session (E/CN.4/Sub.2/1989/39) and its sixteenth session; E/CN.4/Sub.2/1991/41.

33/ ILO, Economically Active Population 1950-2025 (Geneva: ILO, 1986).

34/ Report of the International Seminar on the Implementation of the Convention on the Rights of the Child with Special Reference to the Exploitation of Child Labour, Bonded Labour and Trafficking and Sale of Children, op.cit., p. 8.

35/ W. Myers, "Alternative Services for Streetchildren: The Brazilian Approach" in A. Bequele and J. Boyden (eds.), Combating Child Labour (Geneva: ILO, 1988), p. 125.

36/ N. Burra, "Child Labour in India: Poverty, Exploitation and Vested Interest", in M.N.S. Jullens (ed.), International Child Labour (Amsterdam: International Society for Prevention of Child Abuse and Neglect, 1990), p. 71.

37/ Human Rights Commission of Pakistan (HRCP), State of Human Rights in Pakistan 1990 (Lahore: HRCP, 1990), pp. 57-59.

38/ Minnesota Lawyers International Human Rights Committee, Restavek: Child Domestic Labour in Haiti (Minneapolis: Minnesota Lawyers International Human Rights Committee, 1990).

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40/ The Independent (22 October 1991).

41/ The Independent (2 April 1991).

42/ Reply to questionnaire, DCI (US), 1991.

43/ Time (20 November 1989), p. 32; Daily Telegraph (India) (16 August 1991).

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ANNEX I

QUESTIONNAIRE RELATING TO THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

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INTERPRETATION OF CERTAIN TERMS USED IN THE QUESTIONNAIRE

For the purpose of this questionnaire, the term:

"Child" is defined by the United Nations Convention on the Rights of the Child 1990 as meaning "every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier";

"Sale of children" should be seen as a flexible term due to the different notions of "sale" and "contracts" in existing municipal systems, noting a definition derived from the 1956 Supplementary Convention on the Abolition of Slavery, as follows: "The transfer of a child from one party (including biological parents, guardians and institutions) to another, for whatever purpose, in exchange for financial or other reward or compensation";

"Child prostitution" refers to the sexual exploitation of a child for remuneration in cash or in kind, usually but not always organized by an intermediary (parent, family member, procurer, teacher, etc.);

"Child pornography" refers to the visual or audio depiction of a child for the sexual gratification of the user, and involves the production, distribution and/or use of such material.

Where those replying to this questionnaire wish to qualify or adjust the interpretation of the words indicated above, kindly indicate accordingly (under Question I).

Question I

1. If you disagree with the interpretations of the words "child", "sale of children", "child prostitution" and "child pornography" given above, please provide your reasons, details and preferred interpretations.

A. International law and cooperation

Question II

1. Is your country a party to the multilateral instruments concerning the prevention and elimination of the sale of children (e.g., the 1956 Supplementary Convention on the Abolition of Slavery, the 1990 Convention on the Rights of the Child, and various instruments of the International Labour Organisation)?

2. Is your country a party to the multilateral instruments concerning the prevention and elimination of child prostitution (e.g., the Convention on the Rights of the Child and the 1949 Convention on the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others)?

3. Is your country a party to the multilateral instruments concerning the prevention and elimination of child pornography (e.g., the Convention on the Rights of the Child and the 1923 International Convention on the Suppression of the Circulation of and the Traffic in Obscene Publications)?

4. How effective is the implementation of these instruments at the local level? Please assess strengths and weaknesses.

5. To what extent is the prevention and elimination of the sale of children, child prostitution and child pornography dependent upon international development strategies and agencies? How should more effective collaboration and interaction be promoted?

Question III

1. Does your country have any bilateral and regional arrangements with other countries to prevent and eliminate the sale of children in relation to adoption? Please give examples.

2. Does your country have any bilateral and regional arrangements with other countries to prevent and eliminate the sale of children in relation to child labour? Please give examples.

3. Does your country have any bilateral and regional arrangements with other countries to prevent and eliminate the sale of children in relation to organ transplantation? Please give examples.

4. Does your country have any bilateral and regional arrangements with other countries to prevent and eliminate child prostitution? Please give examples.

5. Does your country have any bilateral and regional arrangements with other countries to prevent and eliminate child pornography? Please give examples.

B. Sale of children

Question IV

1. The sale of children is mainly carried out for the purposes of:

(a) adoption;

(b) child labour (including sexual exploitation);

(c) organ transplantation.

To what extent, and in what ways and forms, do these violations of children's rights exist in your country? Please describe.

2. What are the root causes of the sale of children in your country, if it exists?

3. What obstacles or problems hamper the prevention and elimination of the sale of children, in particular concerning adoption, child labour, and organ transplantation?

4. What measures and action (e.g., national children's policies; projects to help children and their families; incentives for better law enforcement; community watch; participation of governmental institutions, non-governmental organizations and the private sector, etc.) have been or are being taken to prevent and eliminate the sale of children? Please give examples and assess strengths and weaknesses.

Question V

1. What national laws exist to prevent and eliminate the sale of children in relation to adoption? Please give name of law, date and reference; attach texts if possible.

2. How effective are such laws and what are the sanctions (e.g., maximum/minimum prison sentences, fines, etc.)? Please assess strengths and weaknesses.

3. What national laws exist to prevent and eliminate the sale of children in relation to child labour? Please give name of law, date and reference; attach texts if possible.

4. How effective are such laws and what are the sanctions? Please assess strengths and weaknesses.

5. What national laws exist to prevent and eliminate the sale of children in relation to organ transplantation? Please give name of law, date and reference; attach texts if possible.

6. How effective are such laws and what are the sanctions? Please assess strengths and weaknesses.

7. Have there been any prosecutions where the sale of children relates to adoption, child labour and/or organ transplants? Please give details and statistics.

Question VI

1. Do national development plans, national youth/child policies or other national programmes explicitly mention specific targets and action to prevent and eliminate the sale of children in relation to adoption?

2. How are they implemented? Please assess strengths and weaknesses.

3. Please give examples of measures and action (e.g., programmes, projects) to implement these plans.

4. How much budget is available for these measures and action? Is it sufficient?

5. Who are the counterparts/partners in the implementation of these plans (e.g., governmental, non-governmental, community, children, etc.)?

6. How are these plans evaluated? Who evaluates, and is there follow-up action?

7. What other resources and measures are required to make these plans effective in practice?

Question VII

1. Do national development plans, national youth/child policies or other national programmes explicitly mention specific targets and action to prevent and eliminate the sale of children in relation to child labour?

2. How are they implemented? Please assess strengths and weaknesses.

3. Please give examples of measures and action (e.g., programmes, projects) to implement these plans.

4. How much budget is available for these measures and action? Is it sufficient?

5. Who are the counterparts/partners in the implementation of these plans (e.g., governmental, non-governmental, community, children, etc.)?

6. How are these plans evaluated? Who evaluates, and is there follow-up action?

7. What other resources and measures are required to make these plans effective in practice?

Question VIII

1. Do national development plans, national youth/child policies or other national programmes explicitly mention specific targets and action to prevent and eliminate the sale of children in relation to organ transplantation?

2. How are they implemented? Please assess strengths and weaknesses.

3. Please give examples of measures and action (e.g., programmes, projects) to implement these plans.

4. How much budget is available for these measures and action? Is it sufficient?

5. Who are the counterparts/partners in the implementation of these plans (e.g., governmental, non-governmental, community, children, etc.)?

6. How are these plans evaluated? Who evaluates, and is there follow-up action?

7. What other resources and measures are required to make these plans effective in practice?

C. Child prostitution

Question IX

1. To what extent, and in what ways and forms, does child prostitution exist in your country? Please describe.

2. What are the root causes of child prostitution in your country, if it exists?

3. What obstacles or problems hamper the prevention and elimination of child prostitution?

4. What measures and action have been or are being taken to prevent and eliminate child prostitution? Please give examples and assess strengths and weaknesses.

5. What national laws exist to prevent and eliminate child prostitution? Under the law in your country, is it an offence for an adult to have sexual intercourse with a child? Until what age is the child protected? Please give name of law, date and reference; attach texts if possible.

6. How effective are such laws, and what are the sanctions? Is tourism regarded as an aggravating factor in the sexual exploitation of children? Please assess strengths and weaknesses.

7. Have there been any prosecutions on child prostitution? Please give details and statistics.

Question X

1. Do national development plans, national youth/child policies or other national programmes explicitly mention specific targets and action to prevent and eliminate child prostitution?

2. How are they implemented? Please assess strengths and weaknesses.

3. Please give examples of measures and action (e.g., programmes, projects) to implement these plans.

4. How much budget is available for these measures and action? Is it sufficient?

5. Who are the counterparts/partners in the implementation of these plans (e.g., governmental, non-governmental, community, children, etc.)?

6. How are these plans evaluated? Who evaluates, and is there follow-up action?

7. What other resources and measures are required to make these plans effective in practice?

D. Child pornography

Question XI

1. To what extent, and in what ways and forms, is child pornography produced, distributed or used in your country? Please describe?

2. What are the root causes of child pornography in your country, if it exists?

3. What obstacles or problems hamper the prevention and elimination of the production, distribution and use of child pornography?

4. What measures and action have been or are being taken to prevent and eliminate the production, distribution and use of child pornography? Please give examples and assess strengths and weaknesses.

5. What national laws exist to prevent and eliminate the production, distribution and use of child pornography? Is it an offence to produce, distribute and/or possess child pornography? Please give name of law, date and reference; attach texts if possible.

6. What do the laws on child pornography cover: printed matter, films, video, computerized services? How effective are such laws, and what are the sanctions? Please assess strengths and weaknesses.

7. Have there been any prosecutions on the production, distribution and use of child pornography? Please give details and statistics.

Question XII

1. Do national development plans, national youth/child policies or other national programmes explicitly mention specific targets and action to prevent and eliminate child pornography?

2. How are they implemented? Please assess strengths and weaknesses.

3. Please give examples of measures and action (e.g., programmes, projects) to implement these plans.

4. How much budget is available for these measures and action? Is it sufficient?

5. Who are the counterparts/partners in the implementation of these plans (e.g., governmental, non-governmental, community, children, etc.)?

6. How are these plans evaluated? Who evaluates, and is there follow-up action?

7. What other resources and measures are required to make these plans effective in practice?

E. Miscellaneous

Question XIII

1. Are there laws, policies, measures and budgets (e.g., development aid, social welfare) to help those families who are at risk of becoming, unknowingly or involuntarily, involved in the sale of children, child prostitution and/or child pornography?

2. Are there laws, policies, measures and budgets (e.g., development aid, social welfare) to help raise the status of women/girls who would otherwise be involved in the sale of children, child prostitution and/or child pornography?

3. Are there laws, policies, measures and budgets (e.g., development aid, social welfare) to prevent customers/consumers from becoming involved in the sale of children, child prostitution and/or child pornography? Are there sanctions against those who are involved in exploiting children in these ways?

4. Are there laws, policies, measures and budgets to prevent the business sector (e.g., tourist industry, factory owners, film industry, etc.) from undertaking or becoming parties to the sale of children, child prostitution and/or child pornography? Are there sanctions against those who are involved in exploiting children in these ways?

5. Are there laws, policies, measures and budgets to help law enforcement personnel prevent and eliminate the sale of children, child prostitution and child pornography? Are there sanctions against those who abuse their powers? Are there incentives (e.g., better pay) for those who do their duty well?

6. Are there laws, policies, measures and budgets to help non-governmental organizations prevent and eliminate the sale of children, child prostitution and child pornography?

7. Are there laws, policies, measures and budgets to help community institutions and personnel, e.g. religious groups, youth/children's groups, village leaders, prevent and eliminate the sale of children, child prostitution and child pornography?

8. Are there laws, policies, measures and budgets to help the mass media prevent and eliminate the sale of children, child prostitution and child pornography?

9. Are there laws, policies, measures and budgets to help professional groups and associations (e.g., medical associations, law associations) prevent and eliminate the sale of children, child prostitution and child pornography?

Question XIV

1. Are legal aid and assistance available to the families, legal guardians or representatives of child victims of sale, prostitution and pornography, and to the victims themselves? Please give examples and assess strengths and weaknesses.

2. Are there public and/or private rehabilitation programmes and measures for victims of the sale of children, child prostitution and child pornography? Please give examples and assess strengths and weaknesses, including positive and negative effects on the children. Please give suggestions as to how these programmes could be improved.

3. Are there public and/or private rehabilitation programmes and measures for exploiters and abusers of children, especially if there are psychological reasons for their misconduct? Please give examples and assess strengths and weaknesses.

Question XV

1. To what extent is the issue of the sale of children, child prostitution and child pornography dealt with in formal education (e.g., primary, secondary and tertiary levels)? Please describe the substance and form (e.g., whether it is taught as part of existing courses).

2. To what extent is the issue of the sale of children, child prostitution and child pornography dealt with in non-formal education (e.g., out-of-school programmes and via television/radio)? Please give examples.

3. How active are the mass media in collecting and disseminating information on these matters?

4. Is there a data-gathering institution/mechanism on these matters? Please give examples of the types of information gathered, strengths and weaknesses.

5. What is the current state of research on these matters? What has been done and what is needed?

Question XVI

Please add any further suggestions and recommendations. Please supply texts of documents referred to, wherever possible.

ANNEX II

LIST OF STATES

Member States - English (MSE.)

1. Afghanistan (+ F)
2. Antigua and Barbuda
3. Australia
4. Austria
5. Bahamas
6. Bahrain
7. Bangladesh
8. Barbados
9. Belize
10. Bhutan
11. Botswana
12. Brazil
13. Brunei Darussalam
14. Byelorussia
15. Canada (+ F)
16. China
17. Cyprus
18. Czech and Slovak Federal Republic
19. Denmark
20. Dominica
21. Egypt (+ F)
22. Ethiopia
23. Fiji
24. Finland
25. Gambia
26. Germany (+ C)
27. Ghana
28. Greece
29. Grenada
30. Guyana (+ C)
31. Hungary
32. Iceland
33. India
34. Indonesia
35. Iran (+ F)
36. Iraq
37. Ireland
38. Israel
39. Jamaica
40. Japan
41. Jordan
42. Kenya
43. Korea, Dem.Rep.
44. Korea, Rep. of
45. Kuwait
46. Lebanon
47. Lesotho
48. Liberia
49. Libya
50. Malawi
51. Malaysia
52. Maldives
53. Malta
54. Mauritius
55. Mongolia
56. Mozambique
57. Myanmar
58. Namibia
59. Nepal
60. Netherlands
61. New Zealand
62. Nigeria
63. Norway
64. Oman
65. Pakistan
66. Papua New Guinea
67. Philippines
68. Poland
69. Portugal (+ F)
70. Qatar
71. St. Kitts and Nevis
72. Saint Lucia
73. St. Vincent and the Grenadines
74. Samoa
75. Saudi Arabia
76. Seychelles
77. Sierra Leone
78. Singapore
79. Somalia
80. South Africa
81. Sri Lanka
82. Sudan
83. Suriname
84. Swaziland
85. Sweden
86. Syria
87. Thailand
88. Trinidad and Tobago
89. Turkey (+ F)
90. Uganda
91. Ukraine
92. USSR
93. United Arab Emirates
94. United Kingdom
95. United Rep. of Tanzania
96. United States of America
97. Yemen
98. Yugoslavia
99. Zambia
100. Zimbabwe

Member States - French (MSF.)

1. Albanie
2. Algérie
3. Angola
4. Belgique
5. Bénin
6. Bulgarie (+ E)
7. Burkina Faso
8. Burundi
9. Cambodge
10. Cameroun
11. Cap-Vert
12. Comores
13. Congo
14. Côte d'Ivoire
15. Djibouti
16. France
17. Gabon
18. Guinée
19. Guinée-Bissau
20. Haïti
21. Italie
22. Liban (+ E)
23. Liechtenstein
24. Luxembourg
25. Madagascar
26. Mali
27. Maroc
28. Mauritanie
29. Niger
30. République centrafricaine
31. République démocratique populaire lao
32. Roumanie
33. Rwanda
34. Sao Tomé-et-Principe
35. Sénégal
36. Tchad
37. Togo
38. Tunisie
39. Vanuatu (+ E)
40. Viet Nam (+ E)
41. Zaïre

Non-Member States (NMSF.)

1. Monaco
2. Saint-Marin
3. Saint-Siège
4. Suisse

Member States - Spanish (MSS.   )

1. Argentina
2. Bolivia
3. Chile
4. Colombia
5. Costa Rica
6. Cuba
7. Ecuador
8. El Salvador
9. España
10. Guatemala
11. Guinea Equatorial
12. Honduras
13. Mexico
14. Nicaragua
15. Panama
16. Paraguay
17. Perú
18. República Dominicana
19. Uruguay
20. Venezuela
